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When the 'Escape Ends Responsibility of the IOC and FIFA at the Intersection of Sport Law and Human Rights

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Cover Page Footnote

†J.D., Notre Dame Law School, 2015; B.A., History and Philosophy, William Jewell College, 2012. I want to extend a special thank you to Dean Ed Edmonds for his invaluable guidance and feedback on this note, and to Professor Mary Ellen O'Connell for her guidance and stimulation of my interest in the study of international law. Furthermore, thank you to Tony Calvano and the staff of the Notre Dame Journal of International and Comparative Law for working hard to prepare this note for publication. Finally, I want express my deep gratitude to Melissa Surber, for teaching me to write and think critically. This note is dedicated to my parents, Tom and Teresa Turley, who make everything possible.

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Trista Turley[†]

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A INTRODUCTION

“One of the sources of sport’s enormous...appeal is that it provides an escape, a brief and often intoxicating respite from...everyday life,” sports sociologist Jeffrey O. Segrave commented in 2000.¹ While this may often be the case, sport is not free from disruption by some of the most serious issues and harshest realities of life. International sport is no exception. Before Seagrave wrote his comment at the beginning of the twenty-first century, numerous international sporting events served as platforms for political protest or were marred by violence. The 1968 Summer Olympics in Mexico City witnessed the famous “Black Power” salute by American track runners Tommie Smith and John Carlos, a protest against racism and racially-motivated violence in the United States.² Four years later, tragedy struck at the 1972 Summer Olympics in Munich where eleven Israeli athletes and a German police officer were killed in an act of political terrorism

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¹ Jeffrey O. Segrave, *Sport as Escape*, 24 J. SPORT & SOC. ISSUES 61 (2000).

² KEVIN B. WITHERSPOON, *BEFORE THE EYES OF THE WORLD: MEXICO AND THE 1968 OLYMPIC GAMES* 129 (2008).

by members of the Palestinian group Black September.³ Political activism and violence once again formed a deadly combination at the 1996 Olympics in Atlanta when a pipe bomb exploded in Centennial Olympic Park, killing two and injuring 111 others.⁴ Upon confessing to the bombing, Eric Rudolph told authorities the attack was intended to embarrass the United States government for its stance on abortion and gay rights.⁵

The shattering of the barrier between international sport and some of the more pressing issues of modern life has continued in the early twenty-first century. In the past six years, at least five major international sporting events have drawn heightened scrutiny due either to policies of the host countries alleged to be in violation of human rights or to human rights violations that have occurred incident to the events themselves: the 2008 Olympic Games in Beijing, the 2014 Olympic Games in Sochi, Russia, the 2014 Soccer World Cup and 2016 Olympics in Rio de Janeiro, and the 2022 FIFA World Cup in Qatar. While issuing statements reaffirming a commitment to human rights and assuring that the events in question will take place without disruption, the governing sports bodies responsible for overseeing and running the Olympic Games and the World Cup,—the International Olympic Committee (IOC) and Fédération Internationale Football Association (FIFA) respectively,—have not pursued any concrete action within international law channels to ensure the protection of athletes, spectators, employees, and others from grave human rights violations. This lack of pursuit comes despite the increasing role for non-state actors in international law.⁶ The recalcitrance of these major international sport governing bodies to take a more proactive role, using international law, to ensure the protection of the basic human rights of participants in and spectators of major international sporting events is no longer justified.

This note argues that major governing bodies of international sport should and can assume a greater role in the field of human rights by pursuing enhanced status as an actor under international law, facilitating a treaty between nation states with the cooperation of UNESCO, or some combination of both. The note focuses on the IOC and FIFA—the two largest and arguably most sophisticated governing organizations in international sport. However, the note also carries implications for smaller organizations such as the Commonwealth Games Family (CGF) and the Pan American Sports Organization (PASO). Furthermore, the

³ Alexander Wolf, *When the Terror Began*, SPORTS ILLUSTRATED (Aug. 26, 2002), <http://www.si.com/vault/2002/08/26/328187/when-the-terror-began-thirty-years-later-the-hostage-drama-that-left-11-israeli-olympians-dead-seems-even-more-chilling-and-offers-grim-reminders-to-todays-security-experts>.

⁴ Elizabeth Gleick, *Terror's Venue: Fear Casts a Gruesome Shadow on Moments That Were Meant to be Golden*, TIME, Aug. 5, 1996, at 22, <http://content.time.com/time/magazine/article/0,9171,984937-1,00.html>.

⁵ *Full Text of Eric Rudolph's Confession*, NPR, Apr. 14, 2005, <http://www.npr.org/templates/story/story.php?storyId=4600480> (last visited Jan. 11, 2013).

⁶ See Mary Ellen O'Connell, *Enhancing the Status of Non-State Actors Through a Global War on Terror?*, 43 COLUM. J. TRANSN'TL L., 435, 438–440 (2005) (recounting the increasing rights of NGOs under international law and the progress of non-state actors towards legal personality since the early 1990s).

note only addresses issues that fit neatly within the category of human rights. Part II explores the intersection of human rights and international sport in greater detail. Part III discusses the duty of the governing bodies of international sport to take a more proactive role in ensuring the recognition of human rights. Part IV discusses the ability of the IOC and FIFA to play such a role. Part V discusses various avenues under international law that international sporting organizations may pursue to gain the status or international cooperation necessary to mount a more vigorous defense of human rights in international sport. These options include revising the charters of existing organizations in an effort to obtain greater status under international law, the facilitation of a multilateral treaty between states with an observational role for the major governing bodies of international sport, facilitation of a treaty providing an enforcement role for the United Nations or its constituent organizations, or a combination approach that attempts to secure enhanced status for existing organizations in some matters while addressing others via treaty. Part VI briefly concludes the note.

B THE INTERSECTION OF SPORT AND HUMAN RIGHTS

The notion that the world of sport can be neatly insulated from “everyday life”—probably an overoptimistic generalization at best—simply does not hold true in modern international sport. Since 2001—when the IOC awarded the 2008 Summer Olympics to Beijing—issues of human rights have arisen a number of times in connection with the two largest international sporting events in the world: the Olympics and the FIFA World Cup.⁷ The 2008 Beijing Olympics prompted concerns about the state of human rights in China immediately upon the selection of Beijing as the host city. IOC delegates expressed hopes that the seven-year buildup to the Games would “accelerate openness in China and facilitate improvement on its record on human rights.”⁸ At least twenty-eight non-governmental organizations (NGOs) publically announced their intent to use the Beijing Games as a platform to discuss and protest the state of human rights in China.⁹ The protests, reports, and various other strategies of NGOs such as Human Rights Watch and Amnesty International provoked debate and

⁷ See *Almost Half the World Tuned in to Watch 2010 FIFA World Cup in South Africa*, FIFA, July 11, 2011, <http://www.fifa.com/worldcup/news/y=2011/m=7/news=almost-half-the-world-tuned-home-watch-2010-fifa-world-cup-south-africat-1473143.html> (last visited Jan. 17, 2014) (reporting that 3.2 billion people watched at least one minute of coverage of the 2010 World Cup, and 2.2 billion viewers watched at least 20 minutes); see also *The Final Tally—4.7 Billion Tunes Into Beijing 2008—More Than Two in Three People Worldwide*, NIELSEN, Sept. 5, 2008, http://www.nielsen.com/content/dam/corporate/us/en/newswire/uploads/2008/09/press_release3.pdf (last visited Jan. 17, 2014).

⁸ Jere Longman, *Beijing Wins Bid for 2008 Olympic Games*, N.Y. TIMES, July 14, 2001, <http://www.nytimes.com/2001/07/14/sports/olympics-beijing-wins-bid-for-2008-olympic-games.html?pagewanted=all&src=pm>; see also Susan Brownell, *Human Rights and the Beijing Olympics*, 63 BRIT. J. SOC. 306, 314 (2012) (concluding that, while IOC members voted for Beijing primarily to move the Olympics to a host city outside of the West, the ability of China to engage with IOC members in dialogue on the subject of human rights played an important role).

⁹ Susan Brownell, *Human Rights and the Beijing Olympics*, 63 BRIT. J. SOC. 306, 307 (2012).

significant media coverage of human rights issues during the run-up to the Beijing Games, though coverage was limited in China itself due to national censorship policies.¹⁰ The 2014 Winter Olympics in Sochi drew attention to the Russian government's policies regarding same-sex relationships, particularly to a law banning the "promotion" of homosexuality to minors.¹¹ While Russian President Vladimir Putin asserted that the Russian government would not arrest anyone at the Sochi Games, he also ambiguously warned gay visitors to Sochi to "leave our children in peace."¹² Both the Russian laws and Putin's subsequent comments drew protests in several nations, with many gay-rights groups calling for a boycott of the Sochi games.¹³

Concerns about human rights in relation to international sport are not confined to criticisms of general policies of the host countries. In several instances, human rights concerns have arisen in situations more directly tied to the events or competitions themselves. In 2003, the Iraq War drew attention to revelations by former members of the Iraqi Olympic Team that the Iraq National Olympic Committee, headed by Uday Hussein from 1994–2003, brutally tortured athletes who failed to achieve satisfactory results.¹⁴ In Rio de Janeiro, the construction of venues for the 2014 World Cup and the 2016 Summer Olympics has displaced thousands of residents of the city's slums.¹⁵ FIFA has drawn severe criticism for its selection of Qatar as the host of the 2022 World Cup, prompted in part by the appalling conditions of laborers building venues for the event.¹⁶ At least forty-four Nepalese migrants died during the construction of World Cup facilities in the summer of 2013, and some allege that migrant workers in the emirate face conditions equating to modern-day slavery.¹⁷ The United Nations General Assembly has publicly expressed concerns regarding "the dangers faced by sportsmen and sportswomen, in particular young athletes, including, inter alia, child labor, violence, doping."¹⁸

The rise in human rights concerns relating to major international sporting events appears to be largely, though not exclusively related to two factors. First, the increasing coverage of such events, both by traditional media and emerging social media, leads to heightened awareness of concerns that may otherwise have garnered little or no attention.¹⁹ Second, in an attempt to make interna-

¹⁰ *Id.* at 307–08.

¹¹ *Winter Olympics: Putin Cautions Gay Visitors to Sochi*, BBC, Jan. 17, 2014, <http://www.bbc.co.uk/news/world-europe-25785161> (last visited Jan. 17, 2014).

¹² *Id.*

¹³ *Id.*

¹⁴ Duncan Mackay, *Torture of Iraq's Athletes*, THE GUARDIAN, Feb. 1, 2003, <http://www.theguardian.com/sport/2003/feb/02/athletics.duncanmackay1>.

¹⁵ Simon Romero, *Slum Dwellers Are Defying Brazil's Grand Design for Olympics*, N.Y. TIMES, March 5, 2012.

¹⁶ Editorial, *Death and Servitude in Qatar*, N.Y. TIMES, Nov. 1, 2013, http://www.nytimes.com/2013/11/02/opinion/death-and-servitude-in-qatar.html?_r=0.

¹⁷ *Id.*

¹⁸ *Harnessing the Potential of Sports for Human Rights*, Office of the High Commissioner for Human Rights, Feb. 28, 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/Harnessingthepotentialofsportsforhumanrights.aspx> (last accessed March 5, 2014).

¹⁹ Brownell, *supra* note 9, at 324 (discussing how the widespread coverage of the Olympic Games

tional sporting events truly inclusive, the IOC and FIFA have recently decided to stage events in several first-time host countries.²⁰ This is not to suggest that human rights concerns are exclusive to these new sites. The concerns surrounding the Sochi Games are illustrative of this point. The former Soviet Union hosted the Moscow Olympics in 1980, thus Russia may be considered a “traditional” host site.²¹ Furthermore, the displacement of impoverished residents of slums accompanied the construction of venues for the Seoul Olympics in 1988.²² Nor is it to suggest that either FIFA or the IOC should restrict host sites to certain nations based on a synchronicity between the values or policies of the host nation and a highly-Westernized conception of human rights. As argued in more detail in Section III below, such an approach would be counter-productive both to the goal of a truly inclusive regime of international sport—a goal explicitly articulated by both FIFA and the IOC—as well as the goal of furthering the advance of human rights.²³ However, the increasing prevalence of human rights issues relating to international sport is an issue that can no longer be ignored, particularly if FIFA and the IOC wish to continue these efforts to make international sporting events truly global and inclusive.

C INTERNATIONAL SPORT’S DUTY TO ACTIVELY PROMOTE HUMAN RIGHTS

While there is a well-documented confluence of international sport and human rights concerns, three key questions remain to be answered before exploring the various avenues by which the governing bodies of international sport might take a more active role in establishing and enforcing human rights norms under international law: First, do the major governing bodies of international sport have a responsibility to take such an active role in the promotion and protection of human rights? Second, if such a responsibility exists, what is the extent of this responsibility? Third, if such a responsibility exists, do the governing bodies have the sophistication and capabilities necessary to carry it out? This note addresses the first two questions in this section before turning to the third question in the following section.

As to the first question, the answer is, unequivocally, yes. The major governing bodies of international sport—particularly the IOC and FIFA—have a duty to actively pursue the development and enforcement of human rights for three reasons. The first reason is also the most straightforward: both the Olympic Charter and the governing statutes of FIFA explicitly commit their respective or-

has made the Games a prime venue for debate over various transnational issues, including human rights).

²⁰ *Olympic Games*, IOC, <http://www.olympic.org/olympic-games> (last visited Jan. 18, 2014) (listing all Olympic host cities since the modern incarnation of the Olympics began in 1896).

²¹ *Id.*

²² Asian Coalition for Housing Rights (ACHR), *NGO Profile: Asian Coalition for Housing Rights (ACHR)*, 5 ENV’T & URBANIZATION 153, 155 (1993).

²³ See IOC, *Olympic Charter*, at 16 (September 9, 2013) [hereinafter *Olympic Charter*] (“The mission of the IOC is to promote Olympism throughout the world[.]”); see also FIFA, *FIFA Statutes*, at 6 (The objectives of FIFA include “improv[ing] the game of football constantly and promot[ing] it globally in light of its unifying, educational, cultural and humanitarian values”).

ganizations to the promotion of human rights. The Olympic Charter defines the mission and role of the IOC to include “cooperat[ion] with the competent public or private organisations and authorities in the endeavour to place sport at the service of humanity and thereby to promote peace” as well as “to act against any form of discrimination affecting the Olympic movement” and “to oppose any political or commercial abuse of sport and athletes.”²⁴ Furthermore, the Charter defines Olympism as a “philosophy of life ... That seeks to create a way of life based on the joy of effort, the educational value of good example, social responsibility, and respect for universal fundamental ethical principles.”²⁵ The Charter goes on to state the goal of Olympism as placing sport “at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.”²⁶ Similarly, the FIFA governing statutes define the objectives of FIFA as including “improv[ing] the game of football constantly and promot[ing] it globally in light of its unifying, educational, cultural, and humanitarian values.”²⁷ The statutes also provide that FIFA shall promote friendly relations in society “for humanitarian objectives.”²⁸ If IOC and FIFA take these lofty goals seriously, a proactive stance on the promotion and enforcement of human rights in host nations seems a bare minimum requirement.

The second reason that governing bodies of international sport have a duty to promote and enforce human rights stems from the fact that those bodies are dependent on the participation of thousands of individuals who must assume any risks associated with laws and policies of host nations. A successful Olympics or World Cup event is not possible without the participation of athletes, coaches, training staffs, organizers, and construction laborers among others. The 2012 London Olympics involved the participation of nearly 11,000 athletes alone.²⁹ In order to compete in the Olympics or the World Cup (as well as qualifying events for both competitions), athletes must live, work, and travel in host countries not of their choosing. The same holds true for coaches, training staff, equipment managers, and other support staff who travel with national athletic teams. The athletes and staff are not immune from the laws of the host nations, and must generally follow the laws of those nations, or at least rely on assurances of non-interference from those countries’ governments. Although the arrest or persecution of athletes for reasons in violation of generally accepted human rights (e.g. for religious reasons, personal expressions, etc.) would almost certainly trigger international outcry, athletes and staff enjoy little to no substantive protec-

²⁴ *Olympic Charter*, *supra* note 23, at 16–17.

²⁵ *Id.* at 11.

²⁶ *Id.*

²⁷ FIFA, *FIFA Statutes: Regulations Governing the Application of the Statutes, Standing Orders of the Congress*, at 6 (July 2013) [hereinafter, *FIFA Statutes*].

²⁸ *Id.* at 7 (the Statutes also strictly prohibit discrimination against nations, private persons, or people based on “race, skin colour, ethnic, national, or social origin, gender, language, political opinion, wealth, birth, or any other status, sexual orientation or any other reason.”).

²⁹ Simon Rogers, *London 2012 Olympic Athletes: the Full List*, THE GUARDIAN, July 3, 2012, <http://www.theguardian.com/sport/datablog/2012/jul/27/london-olympic-athletes-full-list#data>.

tions beyond those afforded to other civilians. Because the IOC and FIFA could not successfully operate without requiring athletes and teams to travel to various locations with varying degrees of human rights protections, those organizations have, at the very minimum, an obligation to take more than a passive role in guaranteeing the basic human rights of athletes and team staffs. In addition to the athletes and teams, the IOC and FIFA are dependent on the contributions of individuals residing in the host countries. As noted above, some of these individuals, notably construction workers in Qatar, have been subjected to inhumane conditions in the name of preparing for sporting events.³⁰ Though the lack of a direct relationship between the governing organizations of sport and workers on the ground limits the extent to which such organizations can take a role in protecting human rights (at least relative to the protections that might be extended to athletes and team staffs), the fact that organizations like the IOC and FIFA benefit from the efforts of such workers demands at least some tangible effort.

The third reason international sport should take an active role in the field of human rights and human rights law stems from sport's unique position in the international consciousness. As already noted above, the Olympic Games and the FIFA World Cup attract billions of viewers worldwide.³¹ The United Nations Sport for Development and Peace recognizes the "unique power" of sport to "attract, mobilize, and inspire."³² Sports law scholars Matthew J. Mitten and Hayden Opie have noted, "Sports are an important cultural phenomenon in all countries of the world and have a unique ability to attract, entertain, inspire, and challenge a global populace...Related to sports' cultural and economic, and political value, the combination of extensive media coverage and strong public interest provides enormous power to convey educational messages to diverse global audiences (i.e., sports sell)."³³ Empirical studies suggest that media coverage of international sporting events has the potential to shape viewers' perceptions of a host nation.³⁴ Sociologist Susan Brownell notes that the Olympic Games have historically served as "the major public arena for announcing the existence of a country to a world audience."³⁵ The global reach and unique passion attached to international sporting events provide both the IOC and FIFA with a perhaps unparalleled global stage on which to advance the cause of human rights and pursue a more active role in the creation and enforcement of

³⁰ Editorial, *supra* note 16.

³¹ FIFA, *supra* note 7.

³² *Why Sport?* United Nations Sport for Development and Peace, <http://www.un.org/wcm/content/site/sport/home/sport> (last accessed March 5, 2014).

³³ Matthew J. Mitten & Hayden Opie, *Sports Law: Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 TUL. L. REV. 269, 308–10 (2010).

³⁴ See, e.g., Luo Qing et. al., *Attitudes Towards China Before and After the Beijing Olympics*, 27 INT'L J. HIST. SPORT 1419, 1424–27 (2010) (publishing studies showing that the attitudes of individuals in several European nations regarding the Chinese position on Tibet changed after the respondents viewed coverage of the 2008 Beijing Games, and the attitudes of individuals in Japan regarding the fairness, rationality, and fashionableness of the Chinese populace as well as the Chinese stance on the environment and gender equality changed after respondents viewed coverage of the Beijing Games).

³⁵ Brownell, *supra* note 9, at 307.

international human rights law. This is not to necessarily take the position that all entities or individuals with a large international audience have such a strong duty to actively promote and enforce human rights. For instance, international film stars often command a large international following³⁶—though probably not so large as the often-fanatical devotion to international soccer. However, this does not necessarily mean that actors have a responsibility, either individually or collectively (through an organization such as the Screen Actors Guild), to promote or enforce human rights. However, when combined with the fact that the IOC and FIFA are explicitly committed to the promotion of human rights and both are highly dependent on the labor and services of individuals who must travel to various host nations, the fact that international sport commands such a large and devoted following vests the major governing organizations of international sport with a unique responsibility to actively pursue legal avenues for the protection of human rights.³⁶

Assuming that the major governing bodies of international sport do indeed have a duty to promote and protect human rights using the channels of international law, the next logical question concerns the extent of that duty. While this note unabashedly argues that the IOC and FIFA have a duty to more aggressively use the channels of international law to advance the cause of human rights, it also acknowledges that both the mission and the size of those respective organizations limit this duty. Although both the IOC and FIFA identify advancing humanitarian principles as goals and both have the sophistication to conduct advocacy and legal operations on an international scale (see Section IV below), it should not be overlooked that the primary purpose of both organizations is, after all, to govern and facilitate sporting events. This alone is a major responsibility, involving a substantial commitment of time and resources. Both organizations must organize hundreds, if not thousands, of events from major competitions like the Olympics and the World Cup to qualifying tournaments and, in the case of FIFA, regional competitions and competitions between privately-owned clubs.³⁷ Their day-to-day operations concern the maintenance of rules and standards for competitions, promotion of sportsmanship, training and certification of judges and officials, addressing concerns about the safety of competitions, and addressing violations of anti-doping rules and other prohibitions against cheating.³⁸

In other words, the IOC and FIFA are not humanitarian organizations, aid organizations, or human rights watchdogs. Thus, while these organizations bear some responsibility for the protection of human rights, it would be disingenuous to place upon them the same expectations attached to nation-states or inter-governmental organizations such as the United Nations (UN) or the European Union (EU). Rather, their responsibilities are limited to addressing human

³⁶ For a concrete example of a prior instance in which international sport positively influenced human rights, see Bruce Kidd and Peter Donnelly, *Human Rights in Sports*, 35 INT'L REV. FOR THE SOCIOLOGY OF SPORT 131, 137–38 (2000) (documenting the role of sports organizations in pressuring the South African government to end the apartheid regime).

³⁷ FIFA, *supra* note 7, at 5–7.

³⁸ *Olympic Charter*, *supra* note 23, at 16–18; *FIFA Statutes*, *supra* note 27, at 40–42.

rights issues that arise directly in relation to international sporting events that fall within their governing purview. Indeed, even if the IOC and FIFA wished to take a larger role in promoting and enforcing human rights through the channels of international law, the norms of international law largely limit their ability to participate in the creation or enforcement of human rights laws beyond the extent necessary to fulfill the objectives specifically outlined in the Olympic Charter and the FIFA Statutes.³⁹ Thus, for both practical and legal reasons, the human rights responsibilities of the IOC and FIFA are limited to aggressively protecting the rights of organization officials (including executives, judges, umpires, and referees) and the athletes, coaches, and staff who comprise the membership of national teams participating in international sporting events. To the extent that they are involved in facilitating international sporting events, the organizations should also endeavor to protect the human rights of organizers, construction workers, and other workers in host cities. While additional advocacy and awareness-raising activity regarding the human rights of all persons should be welcomed and encouraged, it should not be considered a responsibility of the IOC, FIFA, or any lesser international sporting body.

The question of the extent to which the IOC and FIFA have a responsibility to promote and protect human rights through the channels of international law implicates a further subsidiary question: Just what *are* the human rights that ought to be protected? At a bare minimum, the standards ought to include the *jus cogens* norms of international law—preemptory norms of international law accepted by the international community as a whole from which no derogation is permitted.⁴⁰ *Jus Cogens* norms include prohibitions against slavery, torture, genocide, extra-judicial killings, and apartheid.⁴¹ In addition to *jus cogens* norms, the IOC and FIFA can look for guidance to the Universal Declaration of Human Rights, adopted by the United Nations in 1948.⁴² In thirty Articles, the Declaration outlines the various rights of all human beings, including rights to life, liberty, and security, rights to personhood before the law, and rights to full and fair public hearings to determine rights and adjudicate criminal charges.⁴³ To be sure, the Declaration is not free from controversy. Many states have adopted part, but not all, of the Declaration; it is far from universally and consistently accepted.⁴⁴ However, most of these disputed rights fall outside the

³⁹ Reparations for Injuries Suffered in the Services of the United Nations, Advisory Opinion, 1949 I.C.J. 174 (April 11).

⁴⁰ *Siderman v. Republic of Arg.*, 965 F.2d 699, 714–17 (9th Cir. 1992).

⁴¹ Matthew McMenamin, *State Immunity Before the International Court of Justice: Jurisdictional Immunities of the State (Germany v. Italy)*, 44 VICT. U. WELLINGTON L. REV. 189, 194 (2013) (noting that the International Law Commission recognizes prohibitions on torture, genocide, and slavery and other violations of international human rights law as examples of *jus cogens* norms); see also Restatement (Third) of the Foreign Relations Law of the United States § 702 (stating that a state violates international law if it encourages, practices or condones genocide, slavery, murder or causing disappearance, torture, prolonged arbitrary detention, systematic racial discrimination, or consistent violations of internationally recognized human rights).

⁴² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁴³ *Id.*

⁴⁴ See Tai-Heng Cheng, *The Universal Declaration of Human Rights at Sixty: Is it Still Right for*

limited scope of human rights duties of the IOC and FIFA as outlined above. Furthermore, the IOC and FIFA need not necessarily directly adopt the Declaration in its entirety, merely look to it as a major source of guidance. Additional guidance may come from other sources, including FIFA's own statutory policies prohibiting discrimination based on "race, skin colour, ethnic, national, or social origin, gender, language, religion, political opinion or any other opinion, wealth, birth, or any other status, sexual orientation or any other reason."⁴⁵

Finally, before proceeding to a discussion of the capabilities of IOC and FIFA to take an aggressive role in promoting and enforcing human rights through international legal channels, it is important to discuss briefly why the IOC and FIFA should not adopt a seemingly much simpler solution to the dilemma created by the clash of human rights and sport: restricting the awarding of host city status to cities located in states with strong human rights protections. First, this approach would likely encourage a Euro-Centric or Western-centric approach, given the national origins of most IOC and FIFA members.⁴⁶ Such an approach might undermine the goal of advancing human rights by inadvertently ignoring human rights abuses by Western countries or long-established superpowers. Furthermore, such an approach would undermine the stated goal of both the IOC and FIFA to promote the cultural and educational values of sport worldwide by shutting developing nations and emerging powers out of the process. Second, even if the IOC and FIFA were to restrict the awarding of host status to certain states, some of those states may be reluctant to host the games due to the costs and environmental impact associated with hosting major sporting events. For instance, Munich appears poised to drop its bid to play host to the 2022 Winter Olympics after citizens of Munich and surrounding towns and districts in the German State of Bavaria rejected referenda required in order for Munich to proceed with its bid for the games.⁴⁷ Third, restricting the sites of athletic events to certain locations in order to avoid human rights issues plays no positive role in resolving human rights issues, but merely shirks an opportunity to make progress. As noted above, the reach and influence of global sporting events, particularly the Olympic Games and the World Cup, is essentially unparalleled. This tremendous influence is among the major sources of the IOC and FIFA's responsibility to play a greater role in the development and enforcement of human rights law. Restricting the host sites would thus be an evasion of responsibility rather than a meaningful attempt to address the clash of human rights and in-

the United States?, 41 CORNELL INT'L L. J. 251, 289–91 (2008).

⁴⁵ *FIFA Statutes*, *supra* note 27, at 7.

⁴⁶ *IOC Members List*, IOC, <http://www.olympic.org/ioc-members-list> (last visited Jan. 19, 2014) (showing that 52 of the 107 members of the IOC are from Europe, Russia, the United States, Canada, Australia, or New Zealand—a number grossly disproportionate to the international population distribution); *see also FIFA Executive Bodies*, FIFA, <http://www.fifa.com/aboutfifa/organisation/bodies/excoandemergency/> (last visited Jan. 19, 2014) (showing that 10 of the 28 members of the FIFA Executive Committee—including the President—hail from the EU, Russia, the United States, or Australia—again, a number not reflective of the global population).

⁴⁷ *Voters Reject Munich's 2022 Winter Olympics Bid*, DEUTSCHE WELLE, Nov. 11, 2013, <http://www.dw.de/voters-reject-munichs-2022-winter-olympics-bid/a-17217384> (last visited Jan. 15, 2014).

ternational sport. Fourth, on a practical level, the restriction of major sporting events to certain host sites would do little to protect those that the IOC and FIFA have the greatest responsibility to protect: officials, athletes, coaches, and staff. Even if the Olympic Games and the World Cup were restricted to host nations with robust human rights protections, qualifying tournaments and events take place throughout the world. Furthermore, sometimes the greatest threat to athletes' human rights may come from within their own country, as was the case of the Iraqi athletes tortured at the hands of Uday Hussein. Athletes and others should be protected in all locations, not just at the most prominent events. Such protection requires a more substantive approach than the mere restriction of host sites.

D THE LEGAL SOPHISTICATION AND CAPABILITIES OF THE IOC AND FIFA

Having established the responsibility of the major governing bodies of international sport to play an active role in the development and enforcement of international human rights law, a more practical question must be addressed: Even if the IOC and FIFA have the responsibility to take a more active role regarding human rights law, are they capable of doing so? This is not a question of whether these organizations currently have the standing or personality necessary under international law; that separate question will be addressed in Part V below. Rather, the capability question concerns whether or not the IOC and FIFA currently boast the infrastructure and sophistication necessary to play a more active role in international law and human rights. Two factors suggest that these organizations do possess these capabilities. First, merely in executing their core duties of governing numerous competitive sporting events worldwide, both the IOC and FIFA demonstrate significant internal sophistication and structure. Second, both organizations have shown themselves capable of making sophisticated legal arguments and contributions through their role in the development of the growing private and semi-public laws of sport, most notably the development of widely recognized anti-doping regulations and the founding of the Court of Arbitration for Sport (CAS).

In merely addressing the day-to-day duties of overseeing the Olympic movement and coordinating the Olympic Games and qualifying events, the IOC utilizes sophisticated structures and processes and engages in legal analysis and quasi-judicial proceedings. The sophistication of the IOC is evinced in part merely from its structure. The IOC consists of three primary organs: the Session, the IOC Executive Board, and the President.⁴⁸ The Olympic Charter provides detailed rules and regulations governing the composition and responsibilities of each organ.⁴⁹ Because the stand-alone powers of the President are relatively limited, this note addresses only the powers of the Session and the Executive Board. The Session is the general meeting of all IOC members, which meets once a year unless further extraordinary sessions are convened by the President or upon writ-

⁴⁸ *Olympic Charter*, *supra* note 23, at 41.

⁴⁹ *Id.* at 41–48

ten request of one-third of session members.⁵⁰ The Session possesses, among other powers, the power to adopt and amend the Olympic Charter, elect the members of the Executive Board, and select host cities for the Olympic Games.⁵¹ Furthermore, the IOC exercises a quasi-judicial power in respect to the expulsion of individual IOC members. An IOC member is subject to expulsion if he or she violates the IOC oath, neglects or knowingly jeopardizes the interests of the IOC, or otherwise acts in a manner “unworthy” of the IOC.⁵² An IOC member can be expelled only upon recommendation by the IOC Executive Committee and the affirmative vote of two-thirds of the Session.⁵³ Members facing expulsion enjoy certain rights, including the right to know the charges against her and the right to present a defense in writing or in person.⁵⁴ The rights and procedures outlined are hallmarks of adjudicatory procedure.

The IOC Executive Board also exercises quasi-judicial functions in fulfilling its rights and responsibilities. The Board consists of the President, four Vice-Presidents, and ten other elected members and is responsible for the administration and management of the IOC and its affairs.⁵⁵ The Executive Board monitors compliance with the Olympic Charter, approves all internal governance regulations, and “takes all decisions, and issues regulations of the IOC, which are legally binding, in the form it deems most appropriate.”⁵⁶ Furthermore, both the Session and the Board are, along with a separately established disciplinary committee, empowered to conduct disciplinary proceedings and issue sanctions and other measures for violations of the Olympic Charter or of the World Anti-Doping Code.⁵⁷ The Board possesses the authority to lead any necessary inquiries into facts underlying proposed measures and sanctions, but may delegate all or part of this authority if it so chooses.⁵⁸ Like the requirements for expelling IOC members, the requirements for issuing measures or sanctions against organizations or individuals for violations of the Olympic Charter or anti-doping regulations include the familiarization of the accused with the charges against him and the right of the accused to present a defense.⁵⁹ The Charter also outlines procedures for challenging IOC Decisions (either by appeal to the Executive Board from a lower committee decision or appeal to the Court of Arbitration for sport, which will be discussed in more detail below).⁶⁰

In addition to utilizing quasi-judicial procedures for matters of internal discipline in governance, the IOC frequently engages in substantive legal analysis and litigation outside of its self-contained structures. One area in which the IOC is particularly active is in intellectual property law. The Olympic Char-

⁵⁰ *Id.* at 41.

⁵¹ *Id.*

⁵² *Id.* at 35.

⁵³ *Id.*

⁵⁴ *Olympic Charter*, *supra* note 23, at 35

⁵⁵ *Id.*

⁵⁶ *Id.* at 45.

⁵⁷ *Id.* at 101.

⁵⁸ *Id.* at 104.

⁵⁹ *Id.*

⁶⁰ *Olympic Charter*, *supra* note 23, at 105.

ter sets specific guidelines for the use of the Olympic symbol (the famous five interlocking rings) as Olympic Emblems (the symbols representing particular Olympic Games) and other properties of the IOC.⁶¹ Following the proliferation of the use of Olympic symbols by non-official sponsors in the 1980s and 1990s, the IOC now jealously guards its properties from so-called “ambush marketing.”⁶² The committee and its national affiliates issue cease-and-desist orders and file lawsuits to protect trademarked Olympic symbols.⁶³ The IOC also enters into numerous contracts to license the use of Olympic trademarks and copyrighted footage of Olympic events by corporations and distributors throughout the world.⁶⁴ Given both the well-defined internal decision-making and disciplinary structures of the IOC and the extent of legal work and analysis required to protect the Committee’s various intellectual properties, there can be little doubt that the IOC possesses the sophistication necessary to play a larger role in global human rights law.

While the IOC boasts significant internal adjudicatory procedures and a robust intellectual property practice, perhaps the most significant indicator of the organization’s capabilities for undertaking sophisticated legal projects is their involvement with the International Court of Arbitration for Sport (CAS). The CAS is a permanent arbitral body headquartered in Lausanne, Switzerland.⁶⁵ The CAS specializes in the facilitation of sports-related disputes referred to it for arbitration and mediation.⁶⁶ The Court’s jurisdiction applies to cases referred to it by arbitration clauses in a contract, a later arbitration agreement, or by appeal from the decision of a sports-related body, the statutes or regulations of which provide for appeal to the CAS.⁶⁷ The CAS generally deals with two classes of cases—commercial cases and disciplinary cases (most notably, doping cases).⁶⁸

⁶¹ *Id.* at 25.

⁶² See Anne M. Wall, Symposium, *National Sports Law Institute Board of Advisors: Intellectual Property Law in China: Enforcing Trademark Rights*, 17 MARQ. SPORTS L. REV. 341, 344 (2006) (noting that the IOC established a brand protection program for the 1996 Atlanta Olympic Games in response to issues of ambush marketing by non-affiliated sponsors).

⁶³ See Jonathan Popman, *Tips for Venturing Into Ambush Marketing*, LAW360 (Lexis), Feb. 17, 2012, <https://advance.lexis.com/api/permalink/afe33c71-9635-4821-8fa0-533ef3480295/?context=1000516> (noting that the United States Olympic Committee and IOC have sent out “hundreds” of cease-and-desist orders and filed lawsuits regarding trademark infringement). In a case where a non-profit organization sued the United States Olympic Committee for a declaratory judgment to allow use of the Olympic Symbol in a poster protesting plans to convert the Lake Placid Olympic Village to a prison after the 1980 Games, the USOC cited both federal trademark law and IOC rules in a cease- and- desist order to the non-profit and later sought to enjoin the use of the Symbol, *see Stop the Olympic Prison v. United States Olympic Comm.*, 489 F. Supp. 1112 (S.D.N.Y. 1980).

⁶⁴ See, e.g., Survey, *2011 Annual Survey: Recent Developments in Sports Law*, 22 MARQ. SPORTS L. REV. 695, 810 (2012) (reviewing case in the Swiss Bundesgericht in which a DVD production company appealed decision of the Court of Arbitration for Sport arising out of a licensing agreement between the company and the IOC, complete with arbitration clauses and choice-of-law provisions).

⁶⁵ The IOC established the CAS on Apr. 6, 1983 at a session in New Delhi. Art. S1 of the CAS Code provides for arbitration. See CAS CODE, including Statutes of the Bodies Working for the Settlement of Sports-Related Disputes (arts. S1–S26), and Procedural Rules (arts. R27–69).

⁶⁶ *Id.* at art. S2.

⁶⁷ *Id.* at art. R27.

⁶⁸ *What Kinds of Cases Can Be Submitted to the CAS?*, General Information to Frequently Asked

It registers roughly 300 cases per year and utilizes nearly 300 arbitrators from eighty-seven different countries.⁶⁹ Some of the Court's cases touch upon the most cutting-edge issues in sports discipline, including doping through blood manipulation (so-called biological passport).⁷⁰ Due to the high volume of cases and the novelty of issues, the CAS plays a leading role in the rapid growth of the body of sports law.

While the CAS now operates independently of the IOC, the IOC played an indispensable role in the development of the CAS. The idea of establishing an international court specializing in sport originated with IOC President Juan Antonio Samaranch in 1981.⁷¹ In 1982, IOC member and former International Court of Justice Judge Kéba Mbaye lead a working group in establishing the groundwork for what would become the CAS.⁷² The IOC ratified the statutes in 1983 and the CAS became operational in 1984.⁷³ Thus, it may be fairly said that the IOC created CAS.

FIFA also bears hallmarks of the infrastructure and organizational sophistication necessary to take an active role in human rights law. Within its internal structure, FIFA operates three separate judicial bodies: the Disciplinary Committee, the Ethics Committee, and the Appeals Committee.⁷⁴ The Disciplinary Committee has jurisdiction to sanction "any breach of FIFA regulations which does not come under the jurisdiction of another body."⁷⁵ Among the specific powers of the Disciplinary Committee are the abilities to impose fines or suspensions for violations of FIFA's extensive disciplinary code, which regulates the conduct of spectators and member federations as well as that of match officials and athletes.⁷⁶ In recent years, the Disciplinary Committee has imposed sanctions for offenses ranging from match fixing by players and officials to racist taunts by spectators.⁷⁷ The Ethics Committee includes both an adjudicatory and

Questions, COURT OF ARBITRATION FOR SPORT (last accessed Dec. 28, 2015, 11:29 AM), <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html>.

⁶⁹ *What is the Court of Arbitration for Sport?*, General Information to *Frequently Asked Questions*, COURT OF ARBITRATION FOR SPORT (last accessed Dec. 28, 2015, 12:02 PM), <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html>.

⁷⁰ Juliet Macur, *Court Upholds Cyclist's Ban Based on Passport*, N.Y. TIMES, Mar. 9, 2011, at B16.

⁷¹ COURT OF ARBITRATION FOR SPORT, General Information on *History of the CAS*, (last accessed Dec. 28, 2015, 12:15 PM), <http://www.tas-cas.org/en/general-information/history-of-the-cas.html>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Committees*, FIFA, <http://www.fifa.com/aboutfifa/organisation/bodies/judicialbodies/> (last accessed Feb. 22, 2014).

⁷⁵ FIFA DISCIPLINARY CODE tit. 2, ch. 1, §3, art. 76, at 44 (2011), <http://resources.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf>.

⁷⁶ *Id.* prelim. tit., art. 3, at 11.

⁷⁷ See *Worldwide Sanctions Imposed in Connection With Match Manipulations*, FIFA, Jan. 28, 2014, <http://www.fifa.com/aboutfifa/organisation/news/newsid=2266447/> (last visited Feb. 22, 2014); *Hungary and Bulgaria Sanctioned to Play Without Spectators*, FIFA, Jan. 8, 2013, <http://www.fifa.com/aboutfifa/organisation/news/newsid=1982124/> (last visited Feb. 22, 2014) (detailing the Disciplinary Committee's respective decisions mandating (i) that the Hungarian national team play a match without spectators after a group of Hungarian supporters

fact-finding chamber.⁷⁸ The Ethics Committee handles cases arising under the FIFA Code of Ethics, which applies to officials, players, and players' agents.⁷⁹ Persons accused before the Ethics Committee are entitled to a hearing and to present and inspect evidence.⁸⁰ Additionally, parties are permitted, though not entitled to, legal representation.⁸¹ The Appeals Committee is empowered to hear appeals from both the Ethics Committee and the Disciplinary Committee.⁸²

In addition to maintaining three internal judicial bodies for governance of international football, FIFA also engages in extensive litigation and contracting to protect its intellectual property. For example, in 2011, FIFA brought suit in the European Court of Justice challenging an action of the Secretary of State for Culture, Media and Sports of the United Kingdom that placed World Cup matches on a list of events to importance of the United Kingdom.⁸³ FIFA brought the challenge on the grounds that placement of the World Cup matches on the list limited FIFA's ability to broadcast the matches on an exclusive basis, thereby lowering the value of broadcast rights.⁸⁴ FIFA's robust licensing program is divided into four distinct divisions: brand collaborations, printed media and publications, philatelic and numismatic collections (postage stamps and coins), and retail and merchandising.⁸⁵ Given the sophistication of the IOC and FIFA's internal adjudicatory structures and robust intellectual property practices, the organizations clearly possess the capabilities necessary to take an active role in promoting and enforcing international human rights law.

E AVENUES FOR ENHANCING HUMAN RIGHTS UNDER INTERNATIONAL LAW

Having established that the IOC and FIFA have both the responsibility and the capability to play a more active role in the field of international human rights law, one final question remains: How? What are the means available under international law by which IOC and FIFA can take an active role in enforcing the human rights of the individuals involved in international sport, be they athletes and coaches or organizers and construction workers? Because both international law and the world of international sport are rapidly growing and evolving fields, this note does not propose an exhaustive list of possible solutions. Rather, the note proposes three possible routes, each of which are subject to some variations. The note will discuss the legal bases of the three options as well as the advantages and disadvantages of each approach. The first option is to attempt

abused the Israeli team with anti-Semitic chants and (ii) that the Bulgarian national team play a match without spectators after a group of Bulgarian supporters threw fireworks onto the field and aimed racist taunts at a member of the Danish national team).

⁷⁸ FIFA CODE OF ETHICS, *Definitions*, at 7 (2012).

⁷⁹ *Id.* tit. 3, ch. 1, §2, art. 28 at 24.

⁸⁰ *Id.* ch. 2, §1, subsec. 1, arts. 38–40 at 30.

⁸¹ *Id.*

⁸² *Id.* §4, art. 81 at 51; DISCIPLINARY, *supra* note 75, §4 at 45.

⁸³ Wall, *supra* note 62, at 817.

⁸⁴ *Id.*

⁸⁵ *Licensing*, indexed in *Marketing*, FIFA, <http://www.fifa.com/aboutfifa/organisation/marketing/licensing/> (last visited Feb. 22, 2014).

to gain increased status under international law. In ideal form, this increased status would eventually allow the International Court of Justice to bring claims on behalf of any individual whose human rights are violated in the course of participation in an international sporting event. The second option is to facilitate a multi-lateral treaty conferring upon signatory nation-states or the United Nations the obligation to respect the human right of individuals participating in international sporting events and the right to bring claims against violators. Such a treaty would include observer status for the governing bodies of international sport. Finally, the third option is to utilize a hybrid of the first two approaches, pursuing enhanced status before the International Court of Justice while simultaneously negotiating a treaty to fill any gaps where enhanced status is inadequate to address and generally strengthen the existing regime of human rights law.

The first option available to the IOC and FIFA is to pursue enhanced status under international law. Enhanced status might otherwise be understood as legal personality. Ideally, this enhanced status would enable the IOC and FIFA to bring claims in the International Court of Justice (ICJ) on behalf of any athlete, coach, official, or other individual involved in an international sporting event whose human rights are violated in the course of her participation. In other words, the IOC and FIFA would be empowered to seek reparations for violations of existing human rights laws. This would provide a double-layer of protection under international law, as both the individual's state of nationality and the IOC/FIFA could bring a claim for human rights abuses. However, such a result would require significant changes in public international law. This difficulty stems from the fact that both the IOC and FIFA are NGOs.⁸⁶ Currently, NGOs enjoy only a relatively weak status under international law. Nation-states enjoy the strongest status under international law. Only nation states enjoy the right to appear as parties in cases before the International Court of Justice.⁸⁷ However, international law does contemplate a roll for non-state actors as well. The most prominent example of a non-state actor on the international state is the United Nations. The UN Charter provides that the organizations "shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes."⁸⁸ The International Court of Justice gave force to this claim in a 1949 advisory opinion regarding the capacity of the United Nations to bring an international claim against a government for injuries suffered by an agent of the United Nations in the performance of his duties. The ICJ determined that, while the United Nations does not possess the full legal personality of a state, the organization did have legal personality with rights and duties on the international plane.⁸⁹ The Court

⁸⁶ See Olympic Charter *supra* note 23, at 31 ("The IOC is an international non-governmental not-for-profit organisation ... recognized by the Swiss Federal Council."); FIFA STATUTES, *supra* note 27, at art. 1, §1 at 6.

⁸⁷ Statute of the International Court of Justice art. 33, *opened for signature* June 26, 1945, 59 Stat. 1031, T.S. No. 933 (entered into force Oct. 24, 1945).

⁸⁸ U.N. Charter art. 104.

⁸⁹ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949

further determined that the rights and duties of an entity such as the United Nations “must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.”⁹⁰ From this determination, the Court proceeded to find that the UN Charter implied a right to bring claims for reparations for harm caused to an agent of the UN in the performance of functions outlined in the UN Charter.⁹¹ Thus, the Court established two key propositions: First, an international organization’s rights and duties are determined by its charter, founding treaty, or other constituent documents. Second, an organization may bring before the ICJ claims against states for harm caused to the organization’s agents in carrying out these rights and duties.

While Advisory Opinion of the ICJ provides a touchstone for analysis of the legal rights and obligations of non-state actors, its findings respecting the rights and duties of the United Nations cannot simply be grafted to apply to the IOC or FIFA. This is because, as NGOs, the IOC and FIFA are not international organizations in the same respect as the United Nations. Neither is a permanent association of states. Consequently, unlike the United Nations charter, neither the Olympic Charter nor the FIFA Statutes define the legal powers and rights as between the organizations and constituent *states*.⁹² NGOs enjoy comparatively limited international legal status. Traditionally, NGOs enjoy the same legal status as individuals, existing subordinate to national laws in the states in which they are created and where they operate.⁹³ As Mary Ellen O’Connell notes, NGOs did make some progress through the 1990s in securing greater rights of access to state territories and law-making forums.⁹⁴ However, generally the rights of NGOs remain ill-defined,⁹⁵ and NGOs do not enjoy standing to bring claims in international tribunals.⁹⁶

Given the relatively weak and amorphous nature of the legal personality currently enjoyed by NGOs, the IOC and FIFA have two options for securing the legal status necessary to bring claims at international tribunals seeking the enforcement of human rights laws with respect to the individuals involved in international sporting events. The first option is to attempt to change the status of the organization from that of an NGO to that of an IGO (inter-governmental organization). This would require significant revisions to the founding charters

I.C.J. Rep. 174 (Apr. 11).

⁹⁰ *Id.* at 180.

⁹¹ *Id.* at 175.

⁹² See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 677 (7th ed. 2007) (summarizing the criteria for legal personality in organizations as: “1. a permanent associations of states, with lawful objects, equipped with organs; 2. a distinction, in terms of legal powers and purposes, between the organization and its member states; 3. the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more states”).

⁹³ O’Connell, *supra* note 6, at 438.

⁹⁴ *Id.*

⁹⁵ See *id.* at 437 (noting that little case law exists defining the parameters of an NGO’s international legal status).

⁹⁶ See Tanya D. Sobol, Note, *An NGO’s Fight to Save Ukraine’s Danube Delta: The Case for Granting Nongovernmental Organizations Formal Powers of Enforcement*, 17 *COLO. J. INT’L ENVTL. L. & POL’Y* 123, 127 (2006) (detailing the failed efforts of NGOs to gain access to international tribunals to enforce international environmental laws against the government of Ukraine).

of the organizations, to the effect that the IOC and FIFA would no longer consist of member committees and federations, but rather of member states. The organizations would need to convince states to consent to ceding certain rights and powers and, in turn, would assume a much greater degree of responsibility under international law. This would, essentially, amount to entirely re-establishing the IOC and FIFA as new organizations, although the organizations could certainly retain or re-adopt existing rules and regulations. Consistent with the ICJ Advisory Opinion in the UN Reparations Case, the IOC and FIFA would need to tailor the content of their respective chartering documents so that their purposes and functions included the protection of the human rights of individuals involved in international sporting events and perhaps go so far as to define who is included among those individuals (to be certain that organizers and laborers receive protections at least to the extent of their role in facilitating successful events).

Such a route is fraught with obvious difficulties. Foremost, the IOC and FIFA would have to convince nation-states to assume a significantly more deferential attitude by actually acceding rights and powers to organizations via international agreement. Because the IOC and FIFA endeavor to promote and govern competition on a truly global scale, the agreement of all states would be necessary. The political and procedural difficulties of securing such an agreement would render this goal all but impossible (e.g. securing ratification by all states, dealing with states objecting to certain rules, procedures, etc.). Given that states are currently able to see their national teams take part in international competition without ceding such rights and powers, it is difficult to imagine why any state would view such a commitment as expedient. Furthermore, even in the unlikely event that the consent of all states could be secured, the IOC and FIFA may reasonably wish to avoid the potential for massive upheaval and internal restructuring that might accompany re-constituting as an international organization.

A second, less daunting route, would be for the organizations to remain as NGOs and simply lead their respective voices to campaign for enhanced status for NGOs under international law. Ideally, this enhanced status would include the right to bring reparations claims for human rights law violations before international tribunals. This second route is not free from difficulty. Enhanced status for NGOs would still require acquiescence from nation-states, either through the amendment of the existing agreements underlying international tribunals or a new treaty (or treaties). Several commentators have noted the opposition of both nation-states and international courts to opening the floodgates for claims made by NGOs.⁹⁷ However, as noted in Section III above, international sport commands a strong following and holds a unique position in the international consciousness. Consequently, a sincere and strong campaign by the IOC and

⁹⁷ See O'Connell, *supra* note 6, at 438 (noting that the progress made by NGOs throughout the 1990s "was often thought to be at the cost of a nation-state's own status on the international plane"); see also Wendy Schoener, *Non-Governmental Organizations and Global Activism: Legal and Informal Approaches*, 4 IND. J. GLOBAL LEGAL STUD. 537, 546 (1997) (noting that fears of a "flood of requests to participate" likely underlie the reluctance of the ICJ to allow NGO participation in contentious hearings).

FIFA would lend a gravitas to the argument for enhanced NGO status that lacks at present. Furthermore, enhancing the status of the IOC and FIFA as NGOs would not necessarily require the same extent of rights and powers afforded to international organizations. Nation-states can exercise a much greater degree of control over the extent to which the IOC, FIFA, and other NGOs enjoy standing by narrowly tailoring the treaties or treaty amendments conferring said standing. This presents a less significant threat to nation-states' rights and powers than surrendering legal powers dependent on the less well-defined and potentially shifting basis of "purposes and functions as specified or implied in...constituent documents and developed in practice."⁹⁸ Furthermore, this approach would present significantly less difficulties for the IOC and FIFA themselves, as they would not need to wholly re-constitute as international organizations.

Though obtaining enhanced status under international law would secure the IOC and FIFA a direct means of participating in the enforcement of international human rights laws, the facilitation of a multi-lateral treaty may prove a more workable option for protecting the human rights of those involved in international sport. The IOC and FIFA might use the influence of their massive global audience to pressure nation-states to come to the bargaining table and negotiate a treaty respecting the rights of participants in global sporting events. The organizations could enlist additional support from the United Nations Human Rights Council, which has explicitly recognized "the potential of sport as a universal language that contributes to educating people on the values of respect, diversity, tolerance and fairness and as a means to combat all forms of discrimination and promote an inclusive society."⁹⁹ While the IOC and FIFA cannot force any nation-state to accept terms, it may forcefully propose such terms as necessary to protect the human rights of all participants in the games, from the freedom of athletes and coaches from arbitrary arrest to the elimination of slave-like conditions for laborers building the stadiums and other facilities necessary to host events. Additionally, the organizations may urge the adoption of expansive enforcement provisions enabling any state to seek enforcement of the treaty against a violator. While the organizations themselves could not be full parties to the treaty by reason of inferior international legal status, they may reserve for themselves an observational role to enhance and encourage enforcement of the treaty.

Like the option of pursuing enhanced status under international law, the option of pursuing a treaty is not without its disadvantages. Chief among these is the fact that the IOC and FIFA command relatively little substantive leverage to bring nation-states to the bargaining table. Aside from public pressure, the organizations have little recourse but to threaten to withhold the granting of host status or, perhaps, the recognition of national teams or federations. Both of these options are counterproductive. As noted in Part III above, the restricting of host status to certain locations both undermines the IOC and FIFA of promoting

⁹⁸ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. Rep. 174 (Apr. 11).

⁹⁹ Human Rights Council Res. 18/23, Rep. of the Human Rights Council, 18th Sess., Sept. 12–30, 2011, U.N. GAOR, 66th Sess., Supp. No. 53, A/HRC/RES/18/23, at 1 (Oct. 17, 2011).

global values through competition and may drive developing nations away from meaningful opportunities to engage in dialogue and make progress on human rights issues. The same potential pitfalls caution against using the recognition of national teams and federations as a bargaining chip. Additionally, such a maneuver would be fundamentally unfair to the athletes who train relentlessly for international competition and exercise little to no influence over the policies of their respective governments. Given the inadvisability of using retaliatory measures, as well as the relative limits of those measures, the IOC and FIFA must rely on positive persuasion alone to bring nation-states to the bargaining table for a treaty.

Another disadvantage of the treaty approach is that, even if an agreement is reached, the enforcement of the agreement is entirely out of the IOC and FIFA's hands and within the discretion of the signatory parties. As long as the IOC and FIFA lack standing, they cannot ensure that the rights outlined in the treaty will be enforced against violators in international courts of law. Yet this is the inherent risk of all treaties and, indeed, all laws: the provisions are useless if not enforced. Additionally, several advantages attach to the treaty method. Treaties are arguably the most well-known and respected sources of international law. More importantly, the nation-state signatories to treaties enjoy the full panoply of rights and duties under international law. Thus, while the IOC and FIFA may themselves lack standing, the other signatories to the treaty are in a stronger position than even international organizations to enforce the terms of the treaty. Furthermore, unlike the effective re-constitution of the IOC and FIFA as international organizations, a multi-lateral treaty would not require the assent of all nations with athletes participating in international sport. While such a result would be strongly preferable, the treaty can originate a multi-lateral agreement between only a handful of nation-states who agree to enforce the provisions as between themselves while leaving the option available for other signatories to join. This would at least provide the beginnings of a regime protecting the rights of those involved in international sport that might grow with encouragement and public pressure. In the case of human rights, something is always preferable to nothing.

Finally, a third option by which the IOC and FIFA may take a more direct role in the development and enforcement of human rights law is to adopt a hybrid approach, campaigning to gain enhanced status while simultaneously pushing for negotiation of a treaty respecting the human rights of individuals involved in international sport. This approach would enable the IOC and FIFA to pursue the strongest and most direct route for enforcing human rights laws—standing to bring claim in competent international courts—while in the short-term securing the protections and public awareness that even a limited treaty might achieve. Obviously, such a route would require greater expenditure of time, finances, and effort by the organizations. However, as demonstrated by their well-defined internal structures, wide-ranging duties, and various legal and quasi-legal endeavors, the IOC and FIFA are large and sophisticated enough to stick their fingers in more than one pie. Given that the successful organization and operation of international sporting events require contributions from tens of thousands of in-

dividuals, from hard-training athletes to hard-working laborers, the effort is not only worth it, it is imperative.¹⁰⁰

F CONCLUSION

The notion of sport as escape has a romantic appeal. It is also not entirely devoid of truth. For the individual, whether playing pickup basketball at a local gym or watching a favorite team compete for a world championship, sport indeed can provide a brief and intoxicating respite from the rigors and trials of everyday life. However, this pleasant simile ignores the reality that, because of its global audience, sport can and often has served as a platform for political expression, both in the form of positive protest and terrible violence. When taken to the extreme, the notion becomes a dangerous illusion. The stark reality is that, not only does sport intersect with the world of human rights, but it can also serve as a threat to those rights. When athletes, coaches, and trainers must travel across international borders to countries with less than robust protections for individual freedoms, human rights are threatened. When laborers can be made to work in slave-like conditions to complete stadiums for soccer matches and track meets, human rights are threatened. When the poorest members of a community can be summarily removed from their homes to make way for such stadiums, human rights are threatened.

The governing bodies of international sport have a moral duty to address these issues head-on. It is the height of hypocrisy to promote the global and unifying values of international sport in one breath and to ignore the actual and potential human rights violations arising from international sport in the next. This duty is not limited to the IOC and FIFA. Yet as the two largest and most sophisticated international sporting bodies in the world, they uniquely command both the following and the expertise necessary to take a major first step towards meaningfully advancing the development and enforcement of human rights law as it relates to international sport. Whether by pursuing enhanced status as NGOs, fighting for a treaty protecting the human rights of athletes, or perhaps through some novel means that emerges in the ever-evolving field of international law, channels are available for the IOC and FIFA to step up their game. While each of these routes offer significant challenges, failure to make an effort at playing a meaningful role can no longer be excused. As the world closes the books on the troubles preceding the 2014 Sochi Olympics and looks forward to the 2014 World Cup and 2016 Olympics in the cleared slums of Brazil, one thing is abundantly clear: there is no escape.

¹⁰⁰ It is worth noting that the European Commission, in developing a European Union Work Plan for good governance in sport, suggested a partnership between public regulatory authorities and the governing bodies in sports. See European Commission, *Second Rep. of Expert Group on Good Governance*, at 2–5 (Sept. 2013).

