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## The Legal Status of the International Olympic Committee

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# COMMENT

## THE LEGAL STATUS OF THE INTERNATIONAL OLYMPIC COMMITTEE

*"[S]hould there exist anywhere in the world a privileged place where one could be tempted to outline the leading ideas which are inspired by the comparison between law and sport, that place is certainly Olympia."*<sup>†</sup>

### INTRODUCTION

The International Olympic Committee (IOC), a nongovernmental organization (NGO), plays an important role in international sports law, and controls the largest and most participated-in international sporting event in the world today—the Olympic Games.<sup>1</sup> The IOC is the governing body for the Olympic Games and has final authority on all questions and disputes that arise under the Games.<sup>2</sup> In 1991, the IOC amended the Olympic Char-

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<sup>†</sup> Battonnier René Bondoux, *Law and Sport*, OLYMPIC REV., Aug.-Sept. 1978, at 494.

<sup>1</sup> The ancient Olympic Games, first celebrated in 776 B.C. at Olympia, Greece, featured competition between rival Greek colonies. Many kings, including the Roman emperor Nero (A.D. 37-68), competed in the Games until Greece lost its independence and the Roman emperor Theodosius I (circa 393 A.D.) abolished the Games. Originally consisting of only a single event, a foot-race the length of the stadium, the Games were later spread out among several days and consisted of events such as boxing, wrestling, the javelin, chariot racing, and the long jump. In 1896, under the King of Greece, the modern Olympic Games were revived. The first Olympiad took place in Athens in a newly constructed stadium. Thereafter, the games moved at four-year intervals to various cities around the world. In 1924, a separate cycle of winter games was played in Chamonix, France. THE NEW ENCYCLOPÆDIA BRITANNICA Vol. VII (15th ed. 1985).

<sup>2</sup> OLYMPIC CHARTER Rule 1 § 1 states: "The IOC is the supreme authority of the Olympic Movement."

OLYMPIC CHARTER Rule 1 § 2 states: "Any person or organization belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC."

ter (governing rules and regulations for the Olympic Games), and on June 16, 1991 these amendments came into force.<sup>3</sup>

This comment analyzes how the IOC has legitimized its "international personality"<sup>4</sup> and legal status under the guidelines of international law, and whether the IOC is using its personality properly. Part I of this comment provides a general background of the IOC. Part II discusses the IOC's status as a nongovernmental organization and legal person under international law. Part III discusses the IOC's establishment of the arbitration tribunal, the Court of Arbitration for Sport (CAS). Part IV analyzes individuals and nations as subjects of IOC rules. Part V points out some existing problems within the IOC's framework and suggests possible solutions to these problems. Finally, Part VI concludes that the IOC has made some necessary changes in the Olympic Charter, however, until further changes are made, any individual or entity should be cautious when dealing with the Olympics' governing body, the IOC.

## I. THE IOC

On June 23, 1894 the International Athletic Congress of Paris<sup>5</sup> unanimously voted in favor of establishing the modern Olympic Games,<sup>6</sup> and the IOC was created.<sup>7</sup> The IOC is a non-profit organization,<sup>8</sup> comprised of members from over fifty coun-

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See also OLYMPIC CHARTER Rule 9 § 2 which states: "The authority of last resort on any question concerning the Olympic Games rests in the IOC."

<sup>3</sup> See OLYMPIC CHARTER.

<sup>4</sup> For a discussion of international personality and how the IOC has proven itself to be an international person see *infra* notes 42-83 and accompanying text.

<sup>5</sup> The Union of the French Societies for Athletic Sport gathered as an international congress, encouraged some years earlier by Baron Pierre de Coubertin, and consisted of participants from twelve different countries. Important sports associations were included in order to discuss the rebirth of the Olympic Games. Howard Stupp, *The Evolution of the Legal Status of the International Olympic Committee In The XXth Century*, Speech to IOC Meeting.

<sup>6</sup> OLYMPIC CHARTER, FUNDAMENTAL PRINCIPLES § 1 states: "Modern Olympism was conceived by Pierre de Coubertin, on whose initiative the International Athletic Congress of Paris was held in June 1894." Coubertin intended the members of the IOC to be custodians of a trust to ensure that members carried out the principles and rules of the Olympic Movement. LORD KILLANIN, *MY OLYMPIC YEARS* 13 (1983).

<sup>7</sup> See JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 26 (1988).

<sup>8</sup> See OLYMPIC CHARTER Rule 19 at § 1.

tries.<sup>9</sup> This participation in the IOC is nearly universal.<sup>10</sup> The "unusual influence" of the IOC in the legal process is partially explained by the Olympic Games' high visibility and charisma.<sup>11</sup> The IOC governs the Olympic Movement,<sup>12</sup> owns the rights to the Olympic Games,<sup>13</sup> and is "the supreme authority of the Olympic Movement."<sup>14</sup> The role of the IOC is to "lead the promotion of Olympism in accordance with the Olympic Charter."<sup>15</sup>

The IOC's responsibilities include: choosing the host cities for the Games and ensuring that the selected host city follows the rules of the Olympic Charter; recognizing and supporting the National Olympic Committees' (NOCs)<sup>16</sup> and International Fed-

<sup>9</sup> See IOC, OLYMPIC BIBLIOGRAPHY (present and honorary members of the IOC) (1992).

<sup>10</sup> Frederic C. Rich, *The Legal Regime for a Permanent Olympic Site*, 15 N.Y.U. J. INT'L L. & POL. 1, 33 (1982).

<sup>11</sup> James A.R. Nafziger, *foreword* to Barbara O'Neill, *International Sports: Have States Succeeded Athletes as the Players?*, 6 DICK. J. INT'L L. 403 (1988).

<sup>12</sup> According to the OLYMPIC CHARTER, FUNDAMENTAL PRINCIPLES §§ 6 and 7:

The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practiced without discrimination of any kind in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair-play . . . . The activity of the Olympic Movement is permanent and universal. It reaches its peak with the bringing together of the athletes of the world at the great sport festival, the Olympic Games.

<sup>13</sup> OLYMPIC CHARTER Rule 11 states:

The Olympic Games are the exclusive property of the IOC which owns all rights relating thereto, in particular, and without limitation, the rights relating to their organization, exploitation, broadcasting and reproduction by any means whatsoever. All profits derived from the celebration of the Olympic Games shall be applied to the development of the Olympic Movement and of sport.

<sup>14</sup> OLYMPIC CHARTER, *supra* note 2.

<sup>15</sup> OLYMPIC CHARTER Rule 2. The IOC promotes "Olympism" by:

[E]ncourag[ing] the coordination, organization and development of sport and sports competition; collaborat[ing] with the competent public or private organizations and authorities in the endeavor to place sport at the service of humanity; ensur[ing] the regular celebration of the Olympic Games; fight[ing] against any form of discrimination affecting the Olympic Movement; support[ing] and encouraging the promotion of sports ethics; dedicat[ing] its efforts to ensure that in sports the spirit of fair play prevails and violence is banned; lead[ing] the fight against doping in sport; tak[ing] measures the goal of which is to prevent endangering the health of athletes; oppos[ing] any political or commercial abuse of sport and athletes; see[ing] to it that the Olympic Games are held in conditions which demonstrate a responsible concern for environmental issues; support[ing] the International Olympic Academy (IOA); [and] support[ing] other institutions which devote themselves to Olympic education.

*Id.* at §§ 1-12.

<sup>16</sup> The primary function of an NOC is to "develop and protect the Olympic Move-

erations' (IFs)<sup>17</sup> respective rights; determining new IOC members; and negotiating television rights.<sup>18</sup>

The current President of the IOC, Juan Antonio Samaranch,<sup>19</sup> stated that "[t]he IOC's most fundamental role is quasi-judicial: to ensure the respect and interpretation of the 'Olympic Charter'."<sup>20</sup>

Members of the IOC are selected by the IOC itself.<sup>21</sup> The official languages of the IOC are French and English.<sup>22</sup> Only one member from a country may serve on the IOC,<sup>23</sup> however, the IOC may elect a second member in countries where the Games have been held.<sup>24</sup>

An IOC member is a representative of the IOC in his or her respective country, and is not a delegate of the country to the IOC.<sup>25</sup> The Olympic Charter mandates that all IOC members must retire by the end of the calendar year in which he or she turns seventy-five years of age; however, those who were elected

ment in their respective countries, in accordance with the Olympic Charter." OLYMPIC CHARTER Rule 31 § 1. As of January 1990, the IOC recognized 167 NOCs. UNITED STATES OLYMPIC COMMITTEE FACT BOOK 44 (1990) [hereinafter FACT BOOK]. See also OLYMPIC CHARTER Rule 31 §§ 2-9 for a more detailed outline of the NOCs' functions and powers.

<sup>17</sup> An International Federation (IF) works with the IOC and NOCs but is an autonomous organization. The IFs conduct the events in their respective sports at the Games and other international competitions and are responsible for setting eligibility rules for such events. FACT BOOK, *supra* note 16, at 47. See also OLYMPIC CHARTER Rule 30 §§ 1-2. For a list of the IFs organized by the IOC, see OLYMPIC CHARTER Rule 51.

<sup>18</sup> LORD KILLANIN, *supra* note 6, at 15.

<sup>19</sup> Juan Samaranch became a member of the Spanish Olympic Committee in 1954. In 1966, Samaranch was appointed to the IOC, serving as president of the Spanish Olympic Committee. In 1976, Samaranch became the first Spanish ambassador to the Soviet Union since 1939. Samaranch was elected President of the IOC in 1980. THE OLYMPICS FACT BOOK 39 (May 1992).

<sup>20</sup> NAFZIGER, *supra* note 7, at 26 (quoting remarks of Juan Antonio Samaranch, OLYMPIC REV., Jan. 1985, at 14).

<sup>21</sup> OLYMPIC CHARTER Rule 20 § 1.1 states:

The IOC chooses and elects its members from among such persons as it [IOC] considers qualified. They must be nationals of a country in which they have their domicile or their main centre of interests and in which there is an NOC recognized by the IOC. (emphasis added).

<sup>22</sup> OLYMPIC CHARTER Rule 27 § 1.

<sup>23</sup> At the 49th IOC Session in May 1954, a rule was passed to limit the number of IOC members per country. For any country that had more than two members at the time of the 1954 ruling, those individuals were allowed to serve until their retirement or death. FACT BOOK, *supra* note 16, at 43.

<sup>24</sup> See OLYMPIC CHARTER Rule 20 § 1, cl. 1.3.

<sup>25</sup> OLYMPIC CHARTER Rule 20 § 1, cl. 1.4.

before 1966 serve for life.<sup>26</sup>

The IOC Executive Board<sup>27</sup> consists of the President, four Vice Presidents and six additional members.<sup>28</sup> The IOC President<sup>29</sup> is elected by secret ballot by a majority of its members present, for an eight-year term and is eligible for re-election for successive four-year terms.<sup>30</sup> The four IOC Vice Presidents serve four-year terms<sup>31</sup> and may be re-elected after a minimum interval of four years between terms.<sup>32</sup>

## II. THE IOC: A NONGOVERNMENTAL ORGANIZATION AND INTERNATIONAL PERSON

### A. *The IOC as a NGO*

The growth of international organizations has played an important role in international relations during the last fifty years.<sup>33</sup> Although international law is primarily concerned with intergovernmental organizations (IGOs), nongovernmental organizations (NGOs)<sup>34</sup> are also an important part of the international picture. In fact, some NGOs have a recognized legal status under treaties and other international arrangements.<sup>35</sup>

There are hundreds of international nongovernmental organizations.<sup>36</sup> The term "NGO" describes an organization concerned with "international matters and, usually multi-national membership and activities."<sup>37</sup> NGOs exist in virtually all fields

<sup>26</sup> See OLYMPIC CHARTER Rule 20 § 3, cl. 3.2.

<sup>27</sup> See OLYMPIC CHARTER Rule 23 § 6 for a list of the Executive Board's powers and duties.

<sup>28</sup> OLYMPIC CHARTER Rule 23 § 1.

<sup>29</sup> OLYMPIC CHARTER Rule 24 § 4 states: "The President presides over all activities of the IOC and represents it permanently."

<sup>30</sup> OLYMPIC CHARTER Rule 24 § 1.

<sup>31</sup> OLYMPIC CHARTER Rule 23 § 3, cl. 3.1.

<sup>32</sup> OLYMPIC CHARTER Rule 23 § 4, cl. 4.2.

<sup>33</sup> LOUIS HENKIN ET AL., INTERNATIONAL LAW 318 (2d ed. 1987).

<sup>34</sup> According to the United Nations, a non-governmental organization is "any international organization not established by intergovernmental agreement." EDMUND JAN OSMAŃCZYK, ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS 565 (1985).

<sup>35</sup> HENKIN, *supra* note 33, at 319.

<sup>36</sup> FELICE MORGENSTERN, LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS 86 (1986).

<sup>37</sup> *Id.*

of human concern, ranging from religion to transport and from art to science.<sup>38</sup> For example, the International Committee of the Red Cross is a nongovernmental body that has played a vital role in the protection of international human rights (i.e. helped develop the 1977 Protocols to the Geneva Conventions).<sup>39</sup> The IOC exemplifies the role of nongovernmental organizations similar to the Red Cross in the "functional process of international integration and progressive development of international law."<sup>40</sup> However, unlike the Red Cross, the IOC is not one of the 800 NGOs in consultative status with the United Nations Economic and Social Council.<sup>41</sup> Nonetheless, as the following section will illustrate, the IOC does appear to have international personality.

### B. *The IOC as an International Person*

"[T]he necessary attribute of international personality, is the power to enter, directly or mediately, into relationships (by treaty or otherwise) with other international persons."<sup>42</sup> In other words, international legal personality involves the "capacity to perform legal acts on the international plane rather than within a municipal law system."<sup>43</sup> International organizations have long assumed a capacity to enter into agreements with states irrespective of whether that power could be found to be expressed or implied in its constituent instrument.<sup>44</sup> For example, prior to the 1991 amendments of the Olympic Charter, the IOC's international legal personality was never defined.<sup>45</sup> Nonetheless, the IOC has been acting as an international person long before the

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<sup>38</sup> A. LeROY BENNET, *INTERNATIONAL ORGANIZATIONS* 418 (3d ed. 1984).

<sup>39</sup> WERNER J. FELD ET AL., *INTERNATIONAL ORGANIZATIONS: A COMPARATIVE APPROACH* 224 (2d ed. 1988).

<sup>40</sup> O'Neill, *supra* note 11, at 403.

<sup>41</sup> See *List of Non-Governmental Organizations in Consultative Status with the Economic and Social Council in 1991*, U.N. ESCOR, 1st Sess., U.N. Doc. E/1991/INF/7 (1991).

<sup>42</sup> HENKIN, *supra* note 33, at 334 (quoting Fitzmaurice, *The Law and Procedure of the International Court of Justice*, 30 BRIT. Y.B. INT'L L. 2 (1953)). See also *Reparation for Injuries Suffered in the Service of the United Nations* 1949 I.C.J. 174, (Apr. 11).

<sup>43</sup> HENKIN, *supra* note 33, at 321.

<sup>44</sup> *Id.*

<sup>45</sup> The IOC's international legal personality was merely implied by Rule 11 of the 1990 Olympic Charter, which stated: "It [the IOC] is a body corporate under international law having juridical status and perpetual succession." 1990 OLYMPIC CHARTER, Rule 11 (prov. ed. 1990).

1991 amendments<sup>46</sup> explicitly defined the IOC to be an international NGO with the status of a legal person.<sup>47</sup>

On September 17, 1981, the Swiss Federal Council, the country's highest executive body, published a decree which affirmed the IOC's status as an international person:

The Federal Council has decided to

expressly recognize the importance and the universal vocation of your Committee [IOC] in the world of sport. Moreover, the Federal Council wishes to note that it is in the interests of our country to have your Committee [IOC] here, where it has had its headquarters since 1915, within the area of Switzerland's external relations.

The Federal Council states

The IOC benefits in Switzerland from a juridical nature and thus from rights and liberties guaranteed by Swiss law.

In view of these considerations, the Federal Council has decided to accord to your Committee [IOC] a special statute which will take into account its universal activities and its specific character as an international institution.

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<sup>46</sup> Prior to the 1991 Charter, the IOC's international legal personality was implicitly derived from various rules. For example, Rule 4 gave the IOC the power to select and enter into written agreements with each host city awarded the Games. This power was carried over into the 1992 Charter. See 1990 OLYMPIC CHARTER Rule 4; (1992) OLYMPIC CHARTER Rule 37 § 7.

The IOC also demonstrates its international personality by being able to obtain legal remedies for the protection of its exclusive rights granted in the Olympic Charter in both national and international forums. 1990 OLYMPIC CHARTER Bye-Law to Rule 6 and 51 § 1; (1992) OLYMPIC CHARTER Bye-Law to Rule 17 § 1, cl. 1.1. For example, the IOC has the exclusive rights to the Olympic symbol, flag, motto, and anthem. 1990 OLYMPIC CHARTER Rule 6; (1992) OLYMPIC CHARTER Rule 17. The use of the Olympic symbol, flag, motto, and anthem for any advertising, commercial, or profit-making purposes whatsoever is strictly reserved for the IOC. 1990 OLYMPIC CHARTER Bye-Law to Rule 6 and 51 § 7; (1992) OLYMPIC CHARTER Bye-Law to Rule 17 § 8. The IOC owns all copyrights to any musical work ordered specifically in connection with the Olympic Games. 1990 OLYMPIC CHARTER Rule 52; (1992) OLYMPIC CHARTER Rule 62.

<sup>47</sup> OLYMPIC CHARTER Rule 19 § 1 states: "The IOC is an international non-governmental non-profit organization, of unlimited duration, in the form of an association with the status of a legal person, recognized by decree of the Swiss Federal Council of September 17th, 1981."



We hope that, in this way, your Committee [IOC] will be even more well able to promote the ideals which have inspired its action for decades.<sup>48</sup>

The Swiss Federal Council's decree clearly advocates the IOC's function as an international organization whose "universal activities" afford it international personality.

Participation in the Olympic Games is voluntary.<sup>49</sup> Thus, nations and individuals who participate in the Olympic Games submit themselves to the rules and regulations established by the IOC, and to subsequent sanctions for violating these rules.<sup>50</sup> The IOC alone cannot compel governmental compliance, however, the Olympic Charter exemplifies current international practice and has the effect of customary international law.<sup>51</sup> Therefore, the authoritative force of the rules and regulations of the Olympic Charter are recognized by state and international law.<sup>52</sup>

The Helsinki Accords<sup>53</sup> further illustrate that the rules and regulations of the Olympic Charter are rules of customary international law. Subsection "g" of the Helsinki Accords entitled "Sports" states: "In order to expand existing links and co-operation in the field of sport the participating States will encourage contacts and exchanges of this kind, including sports meetings and competitions of all sorts, on the basis of the established international rules, regulations and practice."<sup>54</sup>

Although the Accords are not legally binding, they provide a "morally compelling, comprehensive expression of norms to

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<sup>48</sup> *The International Statute of the IOC*, OLYMPIC REV., Nov. 1981, at 641.

<sup>49</sup> See O'Neill, *supra* note 11, at 424.

<sup>50</sup> See *id.*

<sup>51</sup> See NAFZIGER, *supra* note 7, at 34.

<sup>52</sup> See O'Neill, *supra* note 11, at 424.

<sup>53</sup> The Helsinki Accords were Conferences on Security and Co-operation in Europe which opened at Helsinki in July of 1973, continued at Geneva from September 18, 1973 to July 21, 1975, and concluded at Helsinki on August 1, 1975 by the High Representatives of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia. Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 1975, 14 I.L.M. 1292 (1975).

<sup>54</sup> *Id.* at 1315.

guide the behavior of the signatory states.”<sup>55</sup> Subsequently, one may logically conclude that if the rules and regulations of the Olympic Charter carry the weight of customary international law, then the IOC must have the requisite international personality necessary to establish and implement these rules and regulations.

Furthermore, the IOC’s international personality is illustrated by the fact that they can seek relief as a plaintiff,<sup>56</sup> or be named a defendant<sup>57</sup> in a sovereign nation’s court of law for adjudication of Olympic disputes. In 1984, the Ninth Circuit Court of Appeals, in *Martin v. International Olympic Committee*,<sup>58</sup> heard an appeal by two track-and-field organizations and eighty-two individual female distance runners from twenty-seven countries who sought a preliminary injunction that would require the organizers of the 1984 Summer Olympic Games in Los Angeles to include 5,000 and 10,000 meter track events for women. Since these events had been scheduled on the men’s program,<sup>59</sup> appellants’ claimed that the failure to include these events constituted gender-based discrimination that violated their equal protection rights under the Fifth and Fourteenth Amendments.<sup>60</sup>

The *Martin* court held for the IOC, affirming the district court’s denial of a preliminary injunction. The court’s holding demonstrated reverence for the Olympic Charter, which in turn illustrates reverence for the IOC’s power to establish and implement these rules:

[W]e find persuasive the argument that a court should be wary of applying a state statute to alter the content of the Olympic Games. The Olympic Games are organized and conducted under the terms of an international agreement—the Olympic Charter. We are extremely hesitant to undertake the application of one state’s statute to alter an event that is staged with competitors from the

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<sup>55</sup> NAFZIGER, *supra* note 7, at 105 n.20.

<sup>56</sup> OLYMPIC CHARTER Bye-Law to Rule 17 § 1 cl. 1.1 states: “The IOC may take all appropriate steps to obtain the legal protection, both on a national and international basis, of the Olympic symbol, flag, motto and anthem.” *Id.* See also *infra* notes 64-70 and accompanying text.

<sup>57</sup> See *infra* notes 58-63 and accompanying text.

<sup>58</sup> 740 F.2d 670, 705 (9th Cir. 1984). For a full discussion of this case, see NAFZIGER, *supra* note 7, at 159-62.

<sup>59</sup> 740 F.2d at 673. See also NAFZIGER, *supra* note 7, at 161.

<sup>60</sup> 740 F.2d at 673.

entire world under the terms of that agreement.<sup>61</sup>

The *Martin* court's refusal to permit domestic laws to supersede an IOC decision (not to have the 5,000 or 10,000 meter race for women) illustrates "international cooperation" for the existence and respect of the IOC's power to make decisions concerning the Games. Thus, the *Martin* decision recognizes that the IOC has international legal personality,<sup>62</sup> and that the IOC's rules under the Olympic Charter will be adhered to and therefore have effect as customary law.<sup>63</sup>

In 1987, the United States Supreme Court, in *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee & IOC*,<sup>64</sup> further illustrated the United States judiciary's respect for the IOC. The case involved the United States Olympic Committee (USOC)<sup>65</sup> and the IOC, who sought relief under the Amateur Sports Act<sup>66</sup> against San Francisco Arts & Athletics, Inc. (SFAA), a nonprofit California corporation, who was sponsoring the "Gay Olympic Games" scheduled for 1982. Plaintiffs sought to prohibit the use of the term "Olympic" and various Olympic symbols on letterheads, mailings, newspapers, and merchandise sold to subsidize the costs of the "Gay Olympic Games."

The Court held that the Amateur Sports Act<sup>67</sup> granted the

<sup>61</sup> *Id.* at 677.

<sup>62</sup> For a definition of international personality, see *supra* notes 42-44 and accompanying text.

<sup>63</sup> See NAFZIGER, *supra* note 7, at 34. International cooperation for the IOC's decision-making authority is apparent, because "[d]espite the drama of East-West boycotts and divided nations issues, states normally adhere to the rules and practices of the Olympic framework and related authority, as a matter of respect and reciprocal obligation." *Id.*

<sup>64</sup> 483 U.S. 522 (1987).

<sup>65</sup> "The USOC is recognized by the International Olympic Committee as the sole agency in the United States whose mission involves training, entering and underwriting the full expenses for the United States teams in the Olympic and Pan American Games. It is the guardian of the Olympic Movement in the U.S." Plant, *Olympic Partners*, THE OLYMPIAN, Jan. 1990, at 6. The USOC is also responsible for voting and endorsing an American bid city to the IOC for each the winter and summer Olympic Games as well as the Pan American Games. FACT BOOK *supra* note 16, at 3. The USOC has perpetual succession and power to "represent the United States as its national Olympic committee in relations with the International Olympic Committee and the Pan-American Sports Organization." 36 U.S.C. § 371, 375(a)(2) (1988).

<sup>66</sup> 36 U.S.C. § 371 et seq. (1988).

<sup>67</sup> Section 110 of the Act, as set forth in 36 U.S.C. § 380 (1980) provides:

Without the consent of the [USOC], any person who uses for the purpose of

USOC exclusive use of the word "Olympic"; that the term "Olympic" was not a generic word, and thus was entitled to trademark protection; that Congress was not prohibited from granting the exclusive use of the word "Olympic" under the First Amendment; and that the USOC was not a governmental actor to whom the Fifth Amendment applied.<sup>68</sup> More importantly, the Court described the IOC as "a highly visible and influential international body."<sup>69</sup>

Such a holding illustrates the recognition and respect that the United States judiciary has for the IOC and its National Olympic Committee, the USOC. One may logically conclude that if the Supreme Court is willing to protect the word "Olympic" from unauthorized use, it is also willing to prohibit other violations of the Olympic Charter and any other IOC regulation governing the Olympic Games.

The Ninth Circuit in *Martin* and the Supreme Court in *San Francisco Arts* added great weight to Rule 1 of the Olympic Charter. Both courts stood behind two important aspects of international personality: cooperation and customary law. "Although the acceptance of this body of law [the Olympic Charter] is not universal, and instances of disobedience all too common, the elements of international custom—repetition, duration and adherence under legal impulsion (*opinio juris*)—are present."<sup>70</sup>

The United States judiciary does not stand alone in supporting the IOC's international personality. The executive branch has also taken a stance, and has stated that it would adhere to the voice of the IOC when the Games are held in the

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trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition -

(1) the symbol of the International Olympic Committee, consisting of 5 interlocking rings;

(2) the emblem of the [USOC], consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief;

(3) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee, or the [USOC] . . . shall be subject to suit in a civil action by the [USOC] for the remedies provided in the Act of July 5, 1946 (60 Stat. 427; popularly known as the Trademark Act of 1946 [Lanham Act]) [15 U.S.C. § 1051 et seq.].

<sup>68</sup> 483 U.S. 522, 523 (1987).

<sup>69</sup> *Id.* at 550.

<sup>70</sup> NAFZIGER, *supra* note 7, at 35.

United States. For example, the Justice Department opposed judicial intervention in *Liang Ren-Guey v. Lake Placid 1980 Olympic Games Inc.*,<sup>71</sup> by filing a Statement of Interest, which stated:

The United States has a substantial foreign policy interest in maintaining its ability to host international sporting events such as the Olympic Games in a manner consistent with decisions reached by the international bodies managing those events. In connection with its hosting of the 1980 Olympic Games, the United States has repeatedly committed to the IOC that the United States would be bound by the list of invitees and the conditions of participation set by the IOC . . . . That commitment was based on our "recognition of the private character of the International Olympic Committee and the games."<sup>72</sup>

In 1982, the IOC sought global recognition of its international personality when it asked the United Nations to accept its "international legal character" in a Draft Declaration. The Declaration would protect and maintain the Olympic Games,<sup>73</sup> and confirm that the United Nations would avoid any action that would harm the Olympic Movement.<sup>74</sup> One of the primary purposes of the Declaration was to make explicit that the Rules of the Olympic Charter, rules that are created and implemented by the IOC, constitute rules of international law.<sup>75</sup> The United Nations' affirmation of the IOC's Draft Declaration would have confirmed the international legal character of the Olympic Charter,<sup>76</sup> as well as the IOC's legal status as a nongovernmental or-

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<sup>71</sup> 424 N.Y.S.2d 535 (3d Dep't 1980), *aff'd*, 403 N.E.2d 178 (1980).

<sup>72</sup> James G. Goettel, Note, *Is the International Olympic Committee Amenable to Suit in a United States Court?*, 7 FORDHAM INT'L L.J. 61, 71 n.91 (1984).

<sup>73</sup> NAFZIGER, *supra* note 7, at 134.

<sup>74</sup> The declaration intended to prevent the type of political boycotts that hit the 1976 and 1980 Games. In 1976, more than 20 teams boycotted the Games in protest against New Zealand's sports links with South Africa. In 1980, 56 countries, led by the United States, boycotted the Moscow Summer Olympics to protest then Soviet military intervention in Afghanistan. Boycotts have also occurred prior to 1976. In 1956, China withdrew from the Melbourne Games because Taiwan was allowed to participate, and in that same year, the Netherlands boycotted the Games because the 1956 Hungarian uprising had "spoiled the festive Olympic atmosphere." Stephen Parry, *Olympic Boycotts*, UPI, May 8, 1984, available in Lexis, Nexis Library, Sports File.

<sup>75</sup> *Id.*

<sup>76</sup> James A.R. Nafziger, *Nonaggressive Sanctions in the International Sports Arena*, 15 CASE W. RES. J. INT'L L., 329, 340 (1983). "The clear intent [of the IOC Draft

ganization with the capacity to establish rules of international law. However, in March 1983, Olympic authorities dropped plans to submit the declaration to the United Nations General Assembly.<sup>77</sup> Dick Pound, a Canadian member of the IOC, stated, "[w]ith the mood in the General Assembly at the moment and the reading we're getting, it would be a bad mistake to try this right now."<sup>78</sup> Pound added, "[o]ur assessment is that things are so mixed up on the international scene<sup>79</sup> that we're better off postponing it."<sup>80</sup> Apparently the IOC feared the political climate in 1983 would cause it to lose control of the Declaration once it reached the floor of the General Assembly.<sup>81</sup>

The Olympic Charter is a legitimate source of power for the IOC's existence; however, the IOC's status as an international person is dependant upon global acceptance of the Olympic Charter. Although the IOC Draft Declaration was not signed by the United Nations, respect for the rules of the Games and the IOC has been illustrated by governments and courts in the United States<sup>82</sup> and around the world.<sup>83</sup>

Since it is clear the IOC has international legal status and acts as an international person, we must now analyze whether this NGO is likewise respecting the rights of individuals and nations who participate in the Games. In other words: Is the IOC playing fairly?

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Declaration) was not only to constrain governments more strongly, but to establish the rules of the Olympic Charter as international law." *Id.* at 339.

<sup>77</sup> Stephen Parry, UPI, Mar. 24, 1983.

<sup>78</sup> *Id.*

<sup>79</sup> The international climate in 1983 was tenuous due to the United States boycott of the 1980 Moscow Games and the potential Soviet boycott of the 1984 Los Angeles Games. *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See *supra* notes 58-70 and accompanying text.

<sup>83</sup> In 1977, a Belgian court confirmed the IOC's rule-making authority by way of customary international law when it held that "international rules of sport supersede conflicting national policies and laws in particular contexts." NAFZIGER, *supra* note 7, at 34. See also Batonnier René Bondoux, *Law and Sport*, OLYMPIC REV., Aug.-Sept. 1978, at 494, 500-02.

### III. THE COURT OF ARBITRATION FOR SPORT

#### A. Background

In 1983, President Samaranch utilized the IOC's international personality and established an arbitration tribunal entitled the Court of Arbitration for Sport (CAS).<sup>84</sup> This court was created in order to settle disputes that arise under the Olympic umbrella.<sup>85</sup>

The CAS enabled sports organizations, athletes, and their partners to settle their disputes without the interference of ordinary courts.<sup>86</sup> The jurisdiction<sup>87</sup> of CAS includes disputes directly or indirectly linked with sport.<sup>88</sup> The Statute and Regulations of the CAS came into force June 30, 1984,<sup>89</sup> and has been

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<sup>84</sup> See NAFZIGER, *supra* note 7, at 35.

<sup>85</sup> STATUTE OF THE COURT OF ARBITRATION FOR SPORT, art. 4 [hereinafter CAS STATUTE] states:

The CAS has jurisdiction to hear and determine disputes of a private nature arising out of the practice or development of sport, and in a general way, all activities pertaining to sport and whose settlement is not otherwise provided for in the Olympic Charter.

Such disputes may bear on questions of principle relating to sport or on pecuniary or other interests affected on the occasion of the practice or the development of sport, and, in a general way, all activities pertaining to sport.

<sup>86</sup> Memorandum from Dr. jur. Gilbert Schwaar, Secretary General of the Court of Arbitration for Sport 2 (Sept. 1991) [hereinafter Schwaar Memo]. Additionally, CAS STATUTE art. 5 states:

Any of the following parties may submit a case to the CAS . . . the . . . IOC . . . IFs . . . NOCs . . . and the collective associations of these recognized by the IOC, the . . . OCOGs, the National Federations, sports associations and, in a general way, any natural person or corporate body having the capacity or power to compromise.

<sup>87</sup> The CAS may act in the first instance if both parties decide via an arbitration agreement to take recourse to the CAS, or in the final instance, when disputes in the first instance were handled by one of the association's tribunals. Schwaar Memo, *supra* note 86, at 3.

<sup>88</sup> COURT OF ARBITRATION FOR SPORT, PRACTICAL GUIDE, § 1, cl. 1.2 [hereinafter CAS PRACTICAL GUIDE] states:

Such disputes . . . [include] commercial disputes connected with sport (sponsorship or management contracts); contracts between organizers of sports events and partners of firms specializing in communication regarding the granting of advertising rights; conflicts of a civil nature connected with the organization or broadcasting of sports events; disputes involving a member of a national or international federation, or between members as a result of decisions taken by bodies; employment contracts of athletes, coaches, etc.

<sup>89</sup> CAS STATUTE art. 74.

operational since 1986.<sup>90</sup> The CAS is made up of sixty lawyers who are familiar with issues relating to sport,<sup>91</sup> and its composition is defined under article 6 of the Statute of the Court of Arbitration for Sport.<sup>92</sup>

The CAS has all the powers of an international court of arbitration.<sup>93</sup> The CAS may convene at its headquarters in Lausanne or anywhere else, upon the decision of the President of the CAS, subject to the approval of the Panel<sup>94</sup> and the agreement of the parties.<sup>95</sup> Swiss law applies unless a particular arbitration agreement provides otherwise.<sup>96</sup> Both parties must agree in writing to have their case heard by the CAS because jurisdiction is optional.<sup>97</sup> Unless the parties in the arbitration agreement have decided otherwise, the CAS holds the majority of its hearings *in camera*.<sup>98</sup> Its judgments are binding and awards are final unless a critical new fact becomes apparent.<sup>99</sup>

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<sup>90</sup> Schwaar Memo, *supra* note 86.

<sup>91</sup> *Id.* at 3.

<sup>92</sup> CAS STATUTE art. 6 provides:

The CAS is composed of a maximum of sixty members, chosen from among persons having had legal training and being recognized as competent in the field of sport. They are appointed for a renewable term of four years.

The President of the CAS is chosen from among the members of the CAS by the President of the IOC. The President of the CAS shall be a member of the IOC.

The current President of the CAS is H.E. Kéba Mbaye, Vice President of the International Court of Justice. Schwaar Memo, *supra* note 86, at 3.

<sup>93</sup> NAFZIGER, *supra* note 7, at 36.

<sup>94</sup> Each case that the CAS hears consists of a Panel comprised of one or three arbitrators. Decisions reached by a Panel are considered to be decisions made by the CAS. CAS STATUTE art. 11.

<sup>95</sup> CAS STATUTE art. 2.

<sup>96</sup> CAS STATUTE art. 23.

<sup>97</sup> *Id.* CAS STATUTE art. 19 states: "The parties who wish to bring a dispute between them before the CAS shall sign an arbitration agreement in which they agree to submit their dispute to the arbitration of the CAS." *See also* CAS STATUTE art. 22, which provides: "The arbitration agreement shall contain no provision incompatible with the present Statute. It shall mandatorily contain the following clause: 'The parties hereby undertake to comply with the provisions of the Statute of the Court of Arbitration for Sport and to enforce in good faith the award to be rendered.'"

<sup>98</sup> *See* CAS STATUTE art. 50.

<sup>99</sup> *Id.* CAS STATUTE art. 66 states:

[T]he request for review is addressed to the CAS in a written brief. It shall be mandatorily based on the appearance of a new fact which, had it been known to the Panel at the time of arbitration, would have had a decisive influence on the award. However, the request for review is not admissible if the fact in question



The authority of the CAS to decide disputes arising out of the Olympic Games, as well as the ability to give advisory opinions,<sup>100</sup> suggests that it is "a fertile source for principles and norms in the development of international sports law."<sup>101</sup>

#### B. *The CAS in the 1990's*

The CAS Statute and Regulations were amended by the IOC on September 20, 1990. Prior to the 1990 amendments, the CAS appeared to be the "little brother" of the IOC rather than an independent tribunal as originally intended. The amendments illustrate that the CAS is beginning to move away from its "little brother" status. For example, under Article 6 of the prior Statute, the President of the IOC was also the President of the CAS.<sup>102</sup> Whereas the amended Statute under Article 6 states: "The President of the CAS is chosen from among the members of the CAS by the President of the IOC."<sup>103</sup> This amendment yields a more independent CAS and illustrates the IOC is concerned with protecting and preserving an individual's right to due process. If the IOC did not amend Article 6, anyone with standing to take the IOC or one of the associations recognized by the IOC (e.g., an IF or NOC) to the CAS, would be staring into the eyes of the President of the IOC. Surely a constitutional issue would arise in our own domestic judicial system if Chief Justice Rehnquist participated in and ran hearings for the same defendant in the district court, circuit court of appeals, and the Supreme Court.

Although the above problem has been rectified, the IOC has fallen short of creating an independent CAS. Article 6 of the

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was known to the applicant for review before the closing of the oral proceedings

<sup>100</sup> COURT OF ARBITRATION FOR SPORT, REGULATIONS art. 65 [hereinafter CAS REGULATIONS] states:

Any request for an advisory opinion from the CAS by the IOC, the IFs, NOCs, associations recognized by the IOC . . . and . . . any other person concerned, shall be submitted to the President of the CAS who shall . . . formulate the questions on which he deems that an advisory opinion may be given by the CAS.

<sup>101</sup> NAFZIGER, *supra* note 7, at 37.

<sup>102</sup> Article 6 of the prior CAS Statute stated: "The President of the IOC bears the title of 'President of the Court of Arbitration for Sport'."

<sup>103</sup> CAS STATUTE art. 6.

new Statute also states: "The President of the CAS shall be a member of the IOC."<sup>104</sup> Why should this be so? If the CAS wants to maintain itself as a completely separate and independent body from the IOC,<sup>105</sup> why not have a completely separate and independent President, one who is knowledgeable in the area of sport, but at the same time unaffiliated with the IOC. In fact, if the CAS is a truly independent tribunal, it would not have thirty of its sixty members chosen by the IOC,<sup>106</sup> fifteen of which include IOC members.<sup>107</sup>

Additionally, the CAS Statute may be modified by the IOC Session upon the proposal of the IOC Executive Board and a two-thirds majority vote.<sup>108</sup> The IOC's power to alter and amend the CAS Statute gives it one more string to pull, a string that must be cut if the CAS is to be viewed as an independent equitable arbitration tribunal.

Furthermore, the CAS' operating budget is completely funded by the IOC.<sup>109</sup> If the CAS is to obtain true independence, funding should not come from an organization that may one day find itself arguing before a CAS panel.

#### IV. INDIVIDUALS AND NATIONS AS SUBJECTS OF IOC RULES

Rule 1 of the Olympic Charter provides that "[t]he IOC is the supreme authority of the Olympic Movement. Any person or organization belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC."<sup>110</sup>

The IOC established its own set of rules under the Olympic Charter. Thus, the question that arises is whether the rules of the Olympic Charter are rules of international law, or merely

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<sup>104</sup> *Id.*

<sup>105</sup> The foreword to the CAS Practical Guide states: "It should be noted that, although the CAS was created by the IOC . . . the members of the CAS are completely independent from the IOC in the exercise of their duties."

<sup>106</sup> CAS STATUTE art. 7 states: "fifteen members are appointed by the IOC from among its own members . . . fifteen members are appointed by the President of the IOC from outside the IOC, the IFs and the NOCs and the Association grouping them."

<sup>107</sup> *See id.*

<sup>108</sup> *See* CAS STATUTE art. 75.

<sup>109</sup> *Foreword* to CAS Practical Guide.

<sup>110</sup> OLYMPIC CHARTER Rule 1 §§ 1 and 2.

discretionary rules set by the IOC. In its decision-making capacity, the CAS has stated that international principles and laws governing the protection of personality and human rights should be the backbone of all decisions pertaining to the athlete as an individual.<sup>111</sup>

For example, the CAS was asked by the Norwegian Olympic Committee to give an advisory opinion<sup>112</sup> on whether an athlete found guilty of "doping" may be banned from participating in the Olympic Games.<sup>113</sup> The CAS held that the NOC is entitled to exclude an athlete from the Games for life, provided that "the athlete has wilfully or intentionally violated the rules governing the use of doping."<sup>114</sup> However, the substances found to be used must be prohibited under the IOC Medical Code.<sup>115</sup> More importantly, the CAS held that "any action taken against any athlete should comply with international principles and laws governing the protection of personality and human rights."<sup>116</sup>

The CAS seems to be a proper forum to ensure that national and international laws are followed under the Olympic Games. However, the CAS is merely an arbitration tribunal and unless both parties consent to CAS jurisdiction the CAS will not hear the case. Consequently, if the IOC violates international law and a nation or individual wishes to dispute the violation, the IOC may simply avoid liability by refusing to submit itself to the CAS. Consider the following example:

In 1968, IOC Chairman A. Brundage insisted that teams of the Republic of South Africa and Rhodesia, states practicing racial discrimination, should be allowed to participate in the 19th Olympic Games in Mexico. This IOC decision was made despite opposition from the NOCs, denunciation by the United Nations, and refusal by the Mexican government to grant entry visas.<sup>117</sup> The IOC's 1968 decision illustrates its power to ignore an international organization such as the United Nations, as well as a

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<sup>111</sup> *Report on NOCs*, OLYMPIC REV., May-June 1987, at 287.

<sup>112</sup> See CAS REGULATIONS art. 65 (regarding the power of the CAS to grant advisory opinions).

<sup>113</sup> *Report on NOCs*, *supra* note 111.

<sup>114</sup> *Id.* See also OLYMPIC CHARTER Rule 48.

<sup>115</sup> *Report on NOCs*, *supra* note 111.

<sup>116</sup> *Id.*

<sup>117</sup> OSMAŃCZYK, *supra* note 34, at 581.

fundamental principle of international law—the protection of human rights.<sup>118</sup> Although the IOC did not condone apartheid, it failed to send a message to countries that practice racial discrimination that the international sports community would not tolerate such violations of human rights.

Despite the IOC's failure to take action, the principles of international law finally prevailed. In 1968, with the aim to present collective theories to the IOC, the Co-ordinating and Research Committee (CRC) of the NOCs was founded with headquarters in Rome.<sup>119</sup> In May of 1968, the CRC's efforts resulted in the exclusion of the Republic of South Africa from the 1968 Games and of Rhodesia from the 1972 Games in Munich, both for pursuing racist policies of apartheid.<sup>120</sup>

Although the CRC successfully persuaded the IOC to exclude South Africa and Rhodesia, the IOC's failure to immediately ban these two nations from the Games for practicing racial discrimination exemplifies how athletes and nations participating in the Games are subject to the IOC's decision-making powers.<sup>121</sup> These decisions may or may not conform to generally accepted principles of international law.

Thus, although the establishment of the CAS has allowed individuals to take their disputes arising out of the Games to an equitable arbitration forum, this is not enough. The IOC must take further action if it wants to prove to the rest of the world that it is not an organization of "elitists." The following section evaluates what problems still exist within the Olympic hierarchy and recommends what steps must be taken by the IOC in order to silence its critics, and at the same time, preserve and ensure fairness under the Games.

## V. PROBLEMS AND SOLUTIONS

Athletes from across the globe gather every two years<sup>122</sup> to participate in arguably the most recognized sporting event in the

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<sup>118</sup> See generally Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948); see also U.N. CHARTER art. 76.

<sup>119</sup> OSMAŃCZYK, *supra* note 34, at 581.

<sup>120</sup> *Id.*

<sup>121</sup> See OLYMPIC CHARTER Rule 1.

<sup>122</sup> Prior to 1992, the Winter and Summer Olympics were held within the same calendar year every four years. However, under the current OLYMPIC CHARTER Rule 36 § 2

world today. Television networks pay millions of dollars to carry the rights of the Games.<sup>123</sup> Cities around the world submit bids to the IOC seeking to host the Olympic Games.<sup>124</sup> The selected city spends hundreds of millions of dollars and many years of preparation to fully accommodate the Olympic events.<sup>125</sup> As a result, countries who host and participate in the Games should have a representative voice within the IOC's framework. Although each respective country's NOC may voice its opinions to the IOC, this power is very limited.<sup>126</sup> The NOCs do not represent their respective countries, rather, they represent the IOC,<sup>127</sup> and the IOC may suspend or withdraw an NOC on various grounds.<sup>128</sup> Thus, a country is prohibited from voicing its opinion or casting a vote in the IOC's decision-making process.

There does seem to be some danger in the IOC's virtual "free reign" over the Olympic Games. This danger stems from the IOC's self-perpetuation and self-governance with few democratic principles. The IOC answers to no higher authority and it is free to make decisions without appeal to any other body.<sup>129</sup>

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states: "Beginning in 1994, the year of the XVII Olympic Winter Games, such Games are held during the second calendar year following that during which an Olympiad begins."

<sup>123</sup> In 1960, CBS was the first network to pay for the rights to broadcast the Olympics. The Winter Games took place that year in Squaw Valley, California and 15 hours of coverage cost CBS \$50,000. In 1992, CBS telecast 116 hours over 17 days of the Winter Games at a cost to CBS of 243 million dollars to retain the rights to the Games. The 1992 Summer Games were awarded to NBC, which paid 401 million dollars to retain coverage of the event. Joe Lapointe, *The Olympics on Television*, FACT BOOK, 41, 44-45 (1992).

<sup>124</sup> See OLYMPIC CHARTER Rule 37, §§ 1-7.

<sup>125</sup> The cost of hosting the 1996 Summer Olympics in Atlanta, Georgia has been estimated to be as high as 1.5 billion dollars. Banks such as NationsBank, the fourth largest bank holding company in the United States, has provided a 300 million dollar line of credit to help Atlanta officials organize the Games. *Bank Opens Line of Credit for the 1996 Atlanta Olympics*, *Agence France Presse*, Jan. 22, 1992, available in LEXIS, Nexis Library, Sports File.

<sup>126</sup> OLYMPIC CHARTER Rule 31 § 6, cl. 6.1-6.4 states:

NOCs have the right to: formulate proposals addressed to the IOC concerning the Olympic Charter and the Olympic Movement in general, including the organizing and the holding of the Olympic Games; give their opinions concerning the candidature for the organization of the Olympic Games; collaborate in the preparation of the Olympic Congresses; [and] participate, on request from the IOC, in the activities of the IOC commissions.

<sup>127</sup> See *supra* note 25 and accompanying text.

<sup>128</sup> See OLYMPIC CHARTER Rule 31 § 9.

<sup>129</sup> See *supra* note 2.

The United Nations has no control over the IOC. As a NGO, the IOC does not have to consult with the United Nations through the Economic and Social Council under the provisions of Article 71 of the United Nations Charter.<sup>130</sup>

It has been argued that Baron Coubertin was "far-seeing when he decided that the Olympic Movement should be run by trustees and not by a democratic body, subject to all the problems that nowadays face the United Nations and UNESCO,"<sup>131</sup> however, opponents of the IOC consider the organization's deliberations to be the "machinations of a fascist-like clique,"<sup>132</sup> and that the IOC consists of "arrogant old aristocrats."<sup>133</sup>

The IOC has also been characterized as the "most exclusive club in the world."<sup>134</sup> In 1952, some of the members of the IOC included one head of state, three princes, one archduke, three counts, three knights, a pasha, a rajah, and "others who held high positions and were entitled to the prefix of 'His Excellency' or 'the Honourable'."<sup>135</sup>

Acts of nepotism have also filled numerous IOC seats. In the past, IOC members could nominate their successors and these nominations were commonly approved.<sup>136</sup> As a result, "family seats" constituted a part of the IOC's membership.<sup>137</sup> By the late 1950's, sons, sons-in-law, and nephews of past members became members of the IOC.<sup>138</sup>

The IOC should not be allowed to perpetuate its own principles and ideologies by way of appointing members to the organization that will ride on the executive board's coattails.<sup>139</sup> A noted Olympic historian, John Lucas, stated:

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<sup>130</sup> See *supra* note 41; see also U.N. CHARTER art. 71.

<sup>131</sup> KILLANIN, *supra* note 6, at 21.

<sup>132</sup> JOHN LUCAS, *THE MODERN OLYMPIC GAMES* 145 (1980).

<sup>133</sup> KILLANIN, *supra* note 131.

<sup>134</sup> *Id.* at 18.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 19.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> The IOC may further their own principles via the OLYMPIC CHARTER Rule 20 § 3 which states: "a member may be expelled by decision of the IOC Session if he has betrayed his oath or if the Session considers that such a member has neglected or knowingly jeopardized the interests of the IOC or has acted in a way which is unworthy of the IOC."

The [IOC] is one of the world's most unusual organizations. It has no legal status and is accountable to no higher authority . . . . In order to retain 'absolute independence', the IOC has never accepted a delegate member from any nation, but has steadfastly maintained a policy of selecting or co-opting members from the world sporting community that would be acceptable ideologically to the remaining membership.<sup>140</sup>

Consequently, the IOC's selection process results in the spreading of "IOC principles" rather than "Olympic principles." The aims of the Olympic Movement are: "[T]o spread the Olympic principles throughout the world, thereby creating international goodwill . . . ." <sup>141</sup> However, "goodwill" cannot possibly be accomplished when a member is appointed based on how he or she will vote.<sup>142</sup> Rather, it can only be achieved if IOC membership is based on an individual's experience and commitment to the spirit of the Olympic Games.

The IOC's "elite" membership and decision-making powers may subsequently jeopardize an individual's right to due process. Pursuant to Rule 19 of the Olympic Charter, IOC decisions on all questions concerning the Olympic Games and Movement are final.<sup>143</sup> This rule enables the IOC to act as a court of original and appellate jurisdiction. Thus, an athlete has nowhere to turn once the IOC has spoken. An athlete may submit his or her claim to the CAS, however, the CAS is purely an arbitration tribunal and an athlete may take the IOC to the CAS only if the IOC consents. Presently, the IOC has never been a party to a dispute submitted to the CAS.<sup>144</sup> Moreover, it is highly unlikely that the IOC, if named a defendant, would voluntarily submit itself to the CAS.

The IOC must prove to the rest of the world that an athlete participating in the Games will be entitled to the same due process that he or she would receive in his or her own country. They must also ensure that IOC membership will be based on merit and not IOC ideologies, and that every country who sends their athletes to the Games will be able to voice their opinions to the

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<sup>140</sup> LUCAS, *supra* note 132, at 136.

<sup>141</sup> OLYMPIC CHARTER Rule 1.

<sup>142</sup> See generally *supra* note 21.

<sup>143</sup> *Supra* note 2, at Rule 19 § 4.

<sup>144</sup> Schwaar Memo, *supra* note 86.

IOC. The IOC can meet these ends with the following changes:

First, the IOC membership election process should be changed so that each country can elect its own representative. This would keep nepotism and elitism out of the IOC and create a more democratic organization with greater state representation. The IOC has argued that its present form of representation prevents politics from entering the Games, however, many of the decisions that the IOC makes are in fact political.<sup>145</sup> Thus, if each member of the IOC represented its respective country, then each country participating in the Games would have a voice in IOC decisions, decisions that affect among other things, human rights.<sup>146</sup> This would prevent a single organization from making decisions that affect the rights of individuals around the world.

Second, the establishment of an "International Sports Court" (ISC) analogous to that of the International Court of Justice (ICJ) should be created. Legal persons and organizations have the capacity to sue and be sued in national courts. Thus, the IOC, an organization with international legal personality, should have, by analogy, the capacity to sue and be sued in international tribunals.<sup>147</sup> The ISC's presence would provide comfort to an athlete participating on foreign soil. This neutral and independent judicial body would protect and preserve an individual's right to due process. The ISC would also provide an athlete (or anyone else with standing), a forum to file their complaints against the IOC or any other individual or organization involved in the Games. Until the ISC is created, an athlete, at the very least, should be allowed to appeal an IOC decision to the ICJ. Granting the ICJ exclusive appellate jurisdiction on all disputes arising under the Olympic Games would ensure due process to all athletes participating in the Games.

Until the IOC takes further steps towards a more democratic system, athletes, host cities, and organizations should take precautions when dealing with the IOC. For example, any agreement that an individual or nation enters into with the IOC or

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<sup>145</sup> See *supra* notes 117-21 and accompanying text. See generally James A.R. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, 86 AM. J. INT'L L. 496-500 (1992).

<sup>146</sup> See *supra* notes 117-21 and accompanying text.

<sup>147</sup> See generally HENKIN, *supra* note 33, at 335.



any other Olympic organization should contain a jurisdictional clause. The importance of a jurisdictional clause is illustrated by the following: The Olympic Charter states that upon selection of the host city, the IOC will enter into a written agreement with the host city and the NOC of its country, and such an agreement will specify the obligations incumbent upon them.<sup>148</sup> However, the Olympic Charter also states that the IOC is excluded from all financial responsibilities which arise under such an agreement.<sup>149</sup> What then happens when a host city or NOC feels that the IOC has breached an agreement or merely disagrees with a decision made by the IOC? Who can the host city or NOC turn to for relief? The IOC? The IOC is not about to rule against itself. Therefore, one way to prevent the IOC from adjudicating a dispute which directly involves the IOC is to include the following clause:

Any dispute arising from the present contract which the parties are unable to settle amicably, shall be settled exclusively and definitely by a tribunal—of one or three members—constituted in accordance with the Statute and Regulations of arbitration of the Court of Arbitration for Sport (CAS). The parties undertake to abide by the provision of the said Statute and Regulations and execute in good faith the award to be rendered. They agree to establish the seat of the tribunal in . . . and to apply . . . law.<sup>150</sup>

The above clause will ensure that the CAS will hear the dispute, not the IOC. Furthermore, if the IOC signs an agreement with the above clause inserted within, then the IOC will be forced to appear before the CAS if a dispute should subsequently arise. The best scenario would be to insert a jurisdictional clause that grants jurisdiction to an ordinary court of law rather than the CAS. However, it would be difficult, for obvious reasons, to convince the IOC to sign an agreement which contained such a clause. The above CAS jurisdictional clause, at the very least, empowers an individual or organization with a little more leverage in its dealings with the IOC, and until the IOC creates a more democratic system, a jurisdictional clause must not be overlooked.

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<sup>148</sup> See OLYMPIC CHARTER Rule 37 § 7.

<sup>149</sup> See OLYMPIC CHARTER Rule 40.

<sup>150</sup> See CAS Practical Guide § 1, cl. 1.8.

## CONCLUSION

Although the IOC has international personality<sup>151</sup> under international customary law<sup>152</sup> and case law,<sup>153</sup> its personality under the present Olympic Charter poses potential abuse of power. The IOC promotes "Olympism" by ensuring that "the spirit of fair play prevails."<sup>154</sup> The IOC has spent most of its time making sure "fair play" prevails on the field and little of its time ensuring that fair play prevails off the field. As a result, the IOC must take another look at the present Olympic Charter and amend it so that athletes and organizations who participate in the Games receive the same fair play off the field as they expect on the field. The IOC is an international organization that can keep the Olympic flame forever burning, but it is time for the IOC to impose upon itself the same standards of fairness that it expects of others.

David J. Ettinger\*

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<sup>151</sup> See *supra* notes 42-48 and accompanying text.

<sup>152</sup> See *supra* notes 49-55 and accompanying text.

<sup>153</sup> See *supra* notes 56-70 and accompanying text.

<sup>154</sup> See OLYMPIC CHARTER Rule 2.

\* The author would like to dedicate this article to his parents, Burton and Marcia Ettinger.