

# THE NECESSITY FOR NATIONAL FEDERATIONS TO STAND UP FOR THEMSELVES

*Sean Rassel*

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## INTRODUCTION

International athletic competitions are some of the most popular events in the world and have impacts that can be felt around the world. Unfortunately, many events involving international athletic competition require legal resolutions. This paper will detail why nations are so competitive in their bids to host events like the Olympic Games and the International Federation of Association Football (FIFA) World Cup. The paper will then go on to discuss the structure of the International Olympic

Committee (IOC), FIFA, and international sports law, including the evolution of the Court of Arbitration for Sport (CAS). Finally, the paper will detail the corruption scandals that have plagued and continue to plague the selection of host cities for the Olympics and FIFA World Cup and discuss the power of the CAS and how it is expanding. The current system is not sufficient to control International Federations (IFs) and the IOC, and it remains to be seen if the necessary action will ever willingly be taken to create a system that can provide justice in the world of international athletics. As a result, it is imperative for National Federations and National Olympic Committees to work together and take the necessary actions to protect the integrity and value of international athletic competitions; these organizations cannot blindly rely on their respective International Federations.

#### I. IMPORTANCE OF HOSTING INTERNATIONAL ATHLETIC COMPETITIONS

Hosting large international sporting events can have a significant impact on nations and the pride that comes with international success is difficult to match. One of the most tangible ways to measure the importance of hosting these events is the economic impact. Hosting these events can serve as a significant bargaining chip in global politics, making the competition amongst bidding countries and cities to host these events intense.

##### A. Economic Importance

One of the cities that bid to host the 2012 Summer Olympic Games was the Washington-Baltimore Metropolitan Area.<sup>1</sup> It was estimated that hosting the Olympic Games in this area would generate \$3.17 billion, including \$2.15 billion in increased transactions among local businesses resulting from increased personal income among local residents.<sup>2</sup> The total economic impact was estimated to be \$5.3 billion and would result in new jobs, wage increases, and new tax revenue that would not be created,-- and has not been created,-- without hosting the Olympic Games.<sup>3</sup>

AECOM,<sup>4</sup> a managing and consulting firm, was enlisted to do a similar study on the economic impacts that hosting a potential World Cup would

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1. STEPHEN S. FULLER & RICHARD CLINCH, *THE ECONOMIC AND FISCAL IMPACTS OF HOSTING THE 2012 OLYMPIC GAMES ON THE WASHINGTON-BALTIMORE METROPOLITAN AREA* 2 (2000).

2. *Id.*

3. *Id.*

4. Background information on the AECOM company can be found at *About, AECOM*, <http://www.aecom.com/About> (last visited Apr. 30, 2012).

have on the United States<sup>5</sup> and estimated that it would have a \$5 billion impact on the United States economy.<sup>6</sup> The study also estimated there would be a creation of between 65,000 and 100,000 new jobs because of the preparation and operation needed to host a World Cup tournament.<sup>7</sup> AECOM compared the impact of hosting the World Cup to the equivalent of hosting 12 to 18 Super Bowls, with each city receiving an economic impact between \$400 million and \$600 million as well as the creation of 5,000 to 8,000 jobs during the event.<sup>8</sup>

Although it is not a sharp economic jolt that results from hosting the Olympic Games, the long term economic impact of hosting the event is evident. Park City, Utah is a perfect example of the long term effects. Over the past ten years, overall skiers have increased by 42%<sup>9</sup> and the overall skiable acreage has increased by 26% in Utah.<sup>10</sup> Park City, Utah, for example, has seen a 200% increase in international guests, including guests from Brazil, Australia, and Mexico.<sup>11</sup> It is questionable if Park City was even a consideration for visitors prior to the resorts' exposure during the 2002 Winter Olympics.<sup>12</sup>

The economic benefits of hosting international competitions are not universally regarded so highly. Estimations made while bidding or preparing to host an international competition are often inflated and studies rarely examine whether the claimed benefits actually materialized.<sup>13</sup> Most of these projections also fail to take into account what is displaced within the economic landscape by the new projected expenditures.<sup>14</sup> Although there is not an exact science to determine what impact hosting an international athletic event would have on an economy, it will affect the economy, even if the effects are long-term and not immediately noticeable.<sup>15</sup> Furthermore, even if the economic benefits are minimal as some economists predict,<sup>16</sup> the

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5. *AECOM Studies Economic Impact of Hosting FIFA World Cup in US*, AECOM (Dec. 8, 2009), [http://www.aecom.com/What+We+Do/Economics/\\_news/AECOM+Studies+Economic+Impact+of+Hosting+FIFA+World+Cup+in+US](http://www.aecom.com/What+We+Do/Economics/_news/AECOM+Studies+Economic+Impact+of+Hosting+FIFA+World+Cup+in+US).

6. *Id.*

7. *Id.*

8. *Id.*

9. Lynn DeBruin, *Utah Resorts Still Capitalizing on Olympic Success*, YAHOO.COM, Nov. 14, 2011, <http://news.yahoo.com/utah-resorts-still-capitalizing-olympic-success-184505576.html>.

10. *Id.*

11. *Id.*

12. *Id.* (citing Park City Chamber and Visitors Bureau President Bill Malone's comments regarding the exposure the Olympic Games provided Park City's ski resorts).

13. Brian Sturgess & Chris Brady, *Hosting the FIFA World Cup*, 7 *WORLD ECON.* 145, 147 (2006).

14. *Id.* at 149.

15. *Id.* at 163.

16. See generally Dennis Coates, *World Cup Economics: What Americans Need to Know About a US World Cup Bid* (Univ. of Maryland Baltimore County, Working Paper No. 10-121), available at [http://www.umbc.edu/economics/wpapers/wp\\_10\\_121.pdf](http://www.umbc.edu/economics/wpapers/wp_10_121.pdf).

*perceived* potential gain serves as a political advantage for those responsible for bringing in these events. Consequently, the bidding to host these events is both competitive and expensive.

### B. Diplomatic and Political Importance

In addition to the economic benefits, whether perceived or real, hosting international athletic events may increase a nation's global political strength. The role of nationalism in international sports will not disappear anytime soon. Nationalism and political movements were never characteristics that were intended to be a part of the Olympic Movement, but have made international competition special and have since been embraced by the IOC as part of the Olympic Movement.<sup>17</sup> Sportsmanship and goodwill are no longer the centerpieces of international competition, at least as far as sovereign nations are concerned:<sup>18</sup> national governments are now using these events to exert political pressure for diplomatic or political gains.<sup>19</sup>

International athletic events have been used to gain both national and political recognition, combat human rights problems, foster international cooperation, and spread political ideology.<sup>20</sup> Unfortunately, national governments have abused national pride to advance political agendas. For example, the main purpose of international athletic developmental programs in the Soviet Union was to ensure that Soviet athletes played a leading role internationally and use the success on the playing field to advance the communist movement.<sup>21</sup> In addition, The Peoples' Republic of China has used international athletics as a means of establishing diplomatic relations with other nations.<sup>22</sup>

The tipping point of political involvement within international athletic events can be seen in the boycotts of the Olympic Games in 1980 and 1984. Hosting the 1980 Summer Olympics was extremely important to the Soviets, and the Soviet Union saw the selection of Moscow as the host city as the IOC's acceptance of the Soviet Union's commitment to peace and national stability.<sup>23</sup> United States President Jimmy Carter was not happy about the selection of Moscow as the host city for the 1980 Olympic Games, and Carter used the Olympic Games to show his disapproval of the

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17. Barbara O'Neill, *International Sports: Have States Succeeded Athletes as the Players?*, 6 DICK. J. INT'L L. 403, 413 (1988).

18. *Id.* at 405.

19. *Id.*

20. *Id.* at 417.

21. *Id.* at 416.

22. *Id.*

23. Scott Rosner & Deborah Low, *The Efficacy of Olympic Bans and Boycotts on Effectuating International Political and Economic Change*, 11 TEX. REV. ENT. & SPORTS L. 27, 46 (2009)

Soviet Union's invasion of Afghanistan.<sup>24</sup> Four years later, the 1984 Olympics were held in Los Angeles.<sup>25</sup> Consequently, the Soviet Union accused the United States organizers of being anti-Soviet and boycotted the games.<sup>26</sup> Although the Soviet Union claimed that its boycott of the Los Angeles games was due to security concerns, it was clear there was a political motive behind the action.<sup>27</sup>

## II. INTERNATIONAL SPORTS LAW

There are many reasons why nations desire to host large international sporting events. Pride and intense competition are two aspects that make athletics both entertaining and memorable experiences. The competition, however, extends far beyond the playing fields. Unfortunately, even in the arena of international athletic competition, participants still end up in legal disputes. International sports law cannot be easily defined by a set of rules, but it can instead be defined as a set of principles, institutions, and procedures that are exercised while partaking in international athletic activities.<sup>28</sup> The law governing these activities is consequently drawn from international agreements, customs, generally accepted practices, and judicial decisions.<sup>29</sup> These influences have been codified in the Olympic Charter, which now serves as the foundation for international sports law.<sup>30</sup> Because soccer is currently an Olympic sport, both FIFA and its member federations are bound by the provisions of the Olympic Charter.

### A. Olympic Movement

At the heart of the Olympic Charter is the Olympic Movement, which aims "to contribute to building a peaceful and better world by educating youth through sport practised in accordance with Olympism and its values."<sup>31</sup> Although the Olympic Charter does not serve as the ultimate source of international sports law, it does provide a solid foundation by serving as a nucleus for the development of international sports law and sets a foundation for managing the legal process.<sup>32</sup> There are three main constituents of the Olympic Movement: the IOC, IFs, and National Olympic Committees.<sup>33</sup>

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24. *Id.* at 47.

25. *Id.* at 53.

26. *Id.* at 55.

27. *Id.*

28. JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW 1 (2d ed. 2004).

29. *Id.* at 1-2.

30. *Id.* at 2.

31. OLYMPIC CHARTER, Rule 1(2).

32. NAFZIGER, *supra* note 28, at 3.

33. OLYMPIC CHARTER, Rule 1(2).

### 1. Structure of the IOC

The IOC is the ultimate decision-maker under the Olympic Charter, and claims authority over any “organisation belonging in any capacity whatsoever to the Olympic Movement.”<sup>34</sup> The IOC has taken proactive steps toward ensuring the Olympic process is one free of corruption and unethical influence. The IOC is officially a non-governmental not-for-profit organization that consists of up to 115 members.<sup>35</sup> The IOC Executive Board resolves disputes relating to the IOC’s application of the Olympic Charter or Code of Ethics.<sup>36</sup> The IOC’s Executive Board is made up of a president, four vice-presidents, and ten other members.<sup>37</sup> Members of the IOC Executive Board are elected through a secret ballot election by the Session<sup>38</sup> and are responsible for overseeing the Olympic Charter and producing legally binding codes, rulings, norms, guidelines, guides, manuals, instructions, requirements and other decisions including, but not limited to all regulations necessary to ensure proper implementation of the Olympic Charter and proper organization of the Olympic Games.<sup>39</sup>

The Ethics Commission is one of the most important entities created by the IOC and aims to retain the integrity of the IOC and Olympic Movement, but the commission only has jurisdiction over matters referred by the IOC President.<sup>40</sup> Although this provision gives the IOC President a potentially dangerous amount of discretion over the Ethics Commission’s authority, the circumstances leading up to its creation should not be overlooked.<sup>41</sup> The IOC Ethics Commission is independent of the IOC and cannot consist of more than four IOC members and must have at least five members that are not members of the IOC.<sup>42</sup> Members of the commission are appointed by the IOC President and confirmed by the Executive Committee.<sup>43</sup> Once again, the IOC allows its president a substantial amount of authority, but when it comes to establishing the Ethics Commission, there is a check on the President’s authority.

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34. *Id.* at Rule 1(4).

35. *Id.* at Rules 15(1), 16(1).

36. *Id.* at Rule 19.

37. *Id.*

38. The Session is the general collection of IOC members.

39. OLYMPIC CHARTER, Rule 19(3.1).

40. INT’L OLYMPIC COMMITTEE, CODE OF ETHICS AND OTHER TEXTS 83-87 (2009), available at <http://www.olympic.org/Documents/Reports/EN/Code-Ethique-2009-WebEN.pdf> [hereinafter IOC CODE OF ETHICS].

41. *See id.*

42. *Id.* at 133-35.

43. *Id.*

## 2. Olympic and IF Sovereignty

International sports organizations enjoy freedom to regulate themselves and promulgate their own rules by setting up their own bylaws and disciplinary procedures. These organizations are created under the arm of private law, and they have placed the legislative, executive, and judicial powers on themselves.<sup>44</sup> IFs have even been able to punish members for merely challenging decisions of the IF in a court of law.<sup>45</sup> National courts, however, still interject their opinions, which has led to a change in philosophy by the IOC and IFs.<sup>46</sup>

When dealing with these organizations, it can be nearly impossible to coordinate the national justice system with IFs and the IOC. This was depicted throughout the litigation process of *Reynolds v. IAAF* and surrounding events. Butch Reynolds<sup>47</sup> was an American track and field star who attempted to resolve his issues with the International Amateur Athletic Federation (IAAF) through United States Federal Court, but the United States Court of Appeals for the Sixth Circuit ruled that international sports federations must have sufficient minimum contacts with a forum state to have jurisdiction, and merely governing athletes located within that state does not constitute sufficient contacts.<sup>48</sup>

However, the Sixth Circuit improperly interjected its opinion on jurisdiction in the case of Butch Reynolds. The Reynolds case had been previously arbitrated per the rules governing the IAAF and The Athletic Congress.<sup>49</sup> The United States is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>50</sup> Because the U.S. is a party to this treaty, it is binding on the Sixth Circuit,<sup>51</sup> and the fact that this case had been previously arbitrated should have been the deciding factor, not the Sixth Circuit's opinion on whether there was proper jurisdiction. But the Sixth Circuit felt it was necessary to take a much more controversial route than was necessary to reach its conclusion.

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44. Andrea Pinna, *The Trials and Tribulations of the Court of Arbitration for Sport. Contribution to the Study of the Arbitration of Disputes Concerning Disciplinary Sanctions*, in *THE COURT OF ARBITRATION FOR SPORT 1984-2004* 386, 389 (Ian S. Blackshaw, Robert C.R. Siekmann & Janwillem Soek eds., 2006).

45. *Id.*

46. *Id.* at 390.

47. *USATF Athlete Biography: Butch Reynolds*, USATF.COM, <http://www.usatf.org/athletes/bios/TrackAndFieldArchive/2000/reynolds.html> (last visited Feb. 23, 2012).

48. *See generally* Reynolds v. IAAF, 23 F.3d 1110 (6th Cir. 1994).

49. NAFZIGER, *supra* note 28, at 75.

50. *Id.* at 78.

51. *Id.*



## B. Structure of FIFA

FIFA is the international governing body for the sport of soccer. The federation is controlled by the Executive Committee which is supposed to abide by the standards set forth in the FIFA Code of Ethics and is bound by the Olympic Charter. However, it is Committee members' alleged misconduct that has given rise to questions surrounding the ability of international sports law to prevent corruption in international sports organizations.

### 1. Executive Committee

The FIFA World Cup's location is chosen by the FIFA's Executive Committee, which is made up of 24 members: one President elected by the congress, eight Vice Presidents, and fifteen members appointed by the world's soccer Confederations and Associations.<sup>52</sup> The design of the committee makes it impossible for a single geographic region to dominate the Executive Committee,<sup>53</sup> and consequently, in order for a country's bid to be selected to host the World Cup, requires some sort of majority amongst FIFA's global representatives.

### 2. FIFA Code of Ethics

FIFA also has a code of ethics, and FIFA's Executive Committee approved the creation of an independent Ethics Committee.<sup>54</sup> The FIFA Code of Ethics directly addresses the giving and accepting of gifts as well as bribery of its members.<sup>55</sup> There is not a blanket ban on the acceptance of gifts or other benefits from hosts,<sup>56</sup> but these gifts must be in accordance with cultural norms and customs.<sup>57</sup> However, if there is any doubt as to whether gifts are not in compliance with the FIFA Code of Ethics, then the gifts must be declined.<sup>58</sup> Further, cash is never an appropriate gift for a FIFA official to accept.<sup>59</sup> FIFA officials must always err on the side of caution when the exchanging of gifts is involved. However, even with a gift

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52. FIFA STATUTES, Rule 30(1) (2011), available at [http://www.fifa.com/mm/document/affederation/generic/01/48/60/05/fifastatuten2011\\_e.pdf](http://www.fifa.com/mm/document/affederation/generic/01/48/60/05/fifastatuten2011_e.pdf).

53. *Id.*

54. FIFA CODE OF ETHICS (2009), available at [http://www.fifa.com/mm/document/affederation/administration/50/02/82/efsdcodeofethics\\_web.pdf](http://www.fifa.com/mm/document/affederation/administration/50/02/82/efsdcodeofethics_web.pdf).

55. *Id.* at Rules 10, 11.

56. *Id.* at Rule 10.

57. *Id.*

58. *Id.*

59. *Id.*



exchanging provision, the FIFA Code of Ethics contains a strict prohibition on bribery.<sup>60</sup>

The FIFA Code of Ethics also addresses the Ethics Committee's jurisdiction, means of redress, and other responsibilities. The FIFA Code of Ethics expressly gives the Ethics Committee the authority to judge all cases that fall under the jurisdiction of FIFA, which include those relating to the conduct of FIFA officials, confederation officials, and associations.<sup>61</sup> FIFA also has jurisdiction over national cases that local governing bodies fail to prosecute appropriately.<sup>62</sup> The discipline for any violations of the FIFA Code of Ethics is derived from the FIFA Statutes and the FIFA Disciplinary Code.<sup>63</sup> Any decision that is made by the Ethics Committee may be appealed to the Appeal Committee unless the sanction handed down was a warning, reprimand, suspension of less than three matches or of up to two months, or a fine of less than CHF 7,500.<sup>64</sup> Appeals Committee decisions are final but are subject to appeals with the CAS.<sup>65</sup>

### C. Subjecting FIFA to the Rules of the IOC

The Olympic Charter places the burden on IFs to ensure the values that are stated in the Olympic Charter are embodied within each individual federation.<sup>66</sup> Consequently, the IOC has a vested interest in its investigation of FIFA. However, the greater question is if FIFA truly cares about the IOC or its own duties to the Olympic Charter. The Olympic Charter seems to suggest that the IOC has the authority to impose its standards on FIFA, who must also submit voluntarily to the IOC's implied authority. FIFA, however, has a larger bargaining chip than other IFs, and appears to be using it to its advantage.

#### 1. *The Olympic Advantage*

Traditionally, IFs use the Olympics as a method to provide a tremendous boost for the profiles of their respective sports. This is evidenced by the actions taken by the Federation Internationale de Basketball and the International Ice Hockey Federation.<sup>67</sup> After National Basketball

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60. FIFA CODE OF ETHICS (2009), Rule 11.

61. *Id.* at Rule 15.

62. *Id.*

63. *Id.* at Rule 17.

64. *Id.* at Rule 18. CHF 7,500 is approximately equal to \$8,266 in United States currency.

65. *Id.*

66. OLYMPIC CHARTER, Rule 27.

67. *Federation Rule Change Opens Olympics to N.B.A. Players*, N.Y. TIMES, April 8, 1989, <http://www.nytimes.com/1989/04/08/sports/federation-rule-change-opens-olympics-to-nba-players.html>; Joe LaPointe, *The N.H.L.'s Olympic Gamble; Stars' Participation in Nagano Could Raise Sport's Profile*, N.Y. TIMES, Sept. 16, 1997,

Association (NBA) players were allowed to play in the Olympics, the NBA's global awareness grew substantially because of the Dream Team's<sup>68</sup> performance in the 1992 Summer Olympics in Barcelona.<sup>69</sup> Prior to the 1998 Winter Olympics in Nagano, National Hockey League (NHL) players were not able to participate in the Olympic Games, but the NHL's commissioner, Gary Bettman, was aware of the boom the NBA experienced by participating in the Olympic games and wanted to follow the NBA model for gathering more exposure.<sup>70</sup> In prior Winter Olympics, hockey tournament participation was limited to any player that had not played in the NHL.<sup>71</sup>

Baseball, by contrast, is a sport that has recently lost its Olympic status.<sup>72</sup> Baseball has a characteristic different than basketball and hockey: Europeans simply do not have interest in the sport and the majority of influence on the IOC is still European.<sup>73</sup> Further, In addition to the inability of the IOC to secure the participation of Major League Baseball (MLB) players for the Olympic baseball tournament, the tournament is formatted in a manner that prevents high levels of play because the competition is limited by providing automatic qualification to regions or countries that have little or no tradition in the sport.<sup>74</sup> For example, China started a baseball program solely because they were given an automatic bid in the 2008 Summer Olympics for being the host nation.<sup>75</sup> The exclusion of MLB players may have been insulting to the IOC. Olympic historian David Wallechinsky believes that the IOC was upset with MLB which resulted in the exclusion of baseball from future Olympic Games.<sup>76</sup>

## 2. FIFA's Olympic Immunity

The Olympic soccer tournament is limited to mostly younger players still trying to establish themselves. National teams may only use players under the age of 23, with the exception of three spots available for veterans that

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<http://www.nytimes.com/1997/09/16/sports/hockey-nhl-s-olympic-gamble-stars-participation-nagano-could-raise-sport-s.html>.

68. *The Original Dream Team*, NBA ENCYCLOPEDIA, [http://www.nba.com/history/dreamT\\_moments.html](http://www.nba.com/history/dreamT_moments.html) (last visited April 22, 2012).

69. LaPointe, *supra* note 67.

70. *Id.*

71. *Id.*

72. Mark Zuckerman, *On Baseball: No Crying Over Olympic Baseball*, WASH. TIMES, Aug. 12, 2008, <http://www.washingtontimes.com/news/2008/aug/12/no-use-crying-over-olympic-baseballs-end>.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Strike 3 for Olympic Baseball*, CBSNEWS.COM (Feb. 11, 2009), <http://www.cbsnews.com/stories/2006/02/09/sportsline/main1300205.shtml>.

exceed the age limit.<sup>77</sup> Although players that meet this qualification frequently have tremendous talent, the Olympic competition is more of a young stars competition than a true competition between the elite athletes of the game.<sup>78</sup> If the Olympic soccer tournament was to start tomorrow, there is the potential it would have to do so without superstars such as Wayne Rooney,<sup>79</sup> Landon Donovan,<sup>80</sup> Didier Drogba,<sup>81</sup> and Lionel Messi.<sup>82</sup> Further, none of the players that were members of the United States' 2010 World Cup team will be eligible for the 2012 Olympic Games in London.<sup>83</sup> Although three of these players could be added to the roster as one of the exempted players, the national teams are still left with an unproven roster. Consequently, fans are left to see an Olympic soccer tournament without the best players from each country.

FIFA's disregard for the Olympics is based purely on the way the Olympic soccer tournament is classified by FIFA. In the days leading up to the 2008 Summer Olympics in Beijing, three European soccer clubs won the right to prevent their players from playing in the Olympic tournament.<sup>84</sup> The CAS took a position in favor of the European clubs because FIFA did not include the Olympic tournament on its official match calendar.<sup>85</sup> Although the decision did not affect the eligibility of the players for the Olympic tournament,<sup>86</sup> it does show that FIFA did not consider the Olympic tournament a priority. There does appear to be some accountability being demonstrated as the Olympics have been included on the match calendar for 2012.<sup>87</sup>

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77. Sam Stern, *Olympic Soccer Limits Age, Not Talent*, N.Y. SUN (Aug. 5, 2008), <http://www.nysun.com/sports/olympic-soccer-limits-age-not-talent/83209/>

78. *Id.*

79. *Wayne Rooney*, ESPN.COM, [http://soccer.net.espn.go.com/player/\\_/id/21046/Wayne-Rooney?cc=5901](http://soccer.net.espn.go.com/player/_/id/21046/Wayne-Rooney?cc=5901) (last visited Apr. 22, 2012).

80. *Landon Donovan*, ESPN.COM, [http://soccer.net.espn.go.com/player/\\_/id/19107/landon-donovan?cc=5901](http://soccer.net.espn.go.com/player/_/id/19107/landon-donovan?cc=5901) (last visited Apr. 22, 2012).

81. *Didier Drogba*, ESPN.COM, [http://soccer.net.espn.go.com/player/\\_/id/18727?cc=5901](http://soccer.net.espn.go.com/player/_/id/18727?cc=5901) (last visited Apr. 22, 2012).

82. *Lionel Messi*, ESPN.COM [http://soccer.net.espn.go.com/player/\\_/id/45843/lionel-messi?cc=5901](http://soccer.net.espn.go.com/player/_/id/45843/lionel-messi?cc=5901) (last visited Apr. 22, 2012).

83. *2010 FIFA World Cup Roster*, USSOCCER.COM, <http://www.ussoccer.com/Tournaments/FIFA-World-Cup/2010-FIFA-World-Cup/Training-Camp-Roster/100526-Roster.aspx> (last visited Apr. 22, 2012).

84. Stephen Wade, *European Soccer Clubs Win Appeal*, USA TODAY, Aug. 8, 2008, [http://www.usatoday.com/sports/olympics/2008-08-06-3240442092\\_x.htm](http://www.usatoday.com/sports/olympics/2008-08-06-3240442092_x.htm).

85. *Id.*

86. *Id.*

87. *Calendar*, FIFA.COM, <http://www.fifa.com/aboutfifa/calendar/events.html> (last visited Apr. 29, 2012).

#### D. Court of Arbitration Sport

In addition to the IOC and IF regulation of international sports, the Court of Arbitration Sport (CAS) is in place to handle international sports disputes through arbitration. The CAS serves as the appellate court for international sports disputes. Every year the number of disputes seems to be growing exponentially, and the CAS has been continuously evolving through an expansion process since its creation.<sup>88</sup>

##### 1. *Infancy of the CAS*

The CAS was established in 1983 by the IOC and began work in June of 1984.<sup>89</sup> The first IF to accept the CAS as a supreme arbitrator was the International Equestrian Federation.<sup>90</sup> But when the independence of the CAS was challenged, the Swiss Federal Tribunal held that the CAS was independent from IFs.<sup>91</sup>

At the inception of the CAS, the IOC had at least the appearance of substantial authority over the CAS. First, the IOC was originally responsible for the costs of the CAS.<sup>92</sup> Also, the combination of the IOC and its President had the authority to appoint 30 of the 60 members of the CAS.<sup>93</sup> The combination of these authorities was enough for the Swiss Federal Tribunal to declare that the CAS was not independent from the reach of the IOC.<sup>94</sup> The lack of complete independence from the IOC showed the necessity for a change in the structure of the CAS.<sup>95</sup>

##### 2. *Reform of the CAS and the Paris Agreement*

The International Conference of Law and Sport was held in 1993 to present proposed changes to the CAS.<sup>96</sup> The most notable change made during this conference was the creation of the International Council of Arbitration for Sport (ICAS).<sup>97</sup> The ICAS then replaced the IOC as the party responsible for overseeing and financing the CAS.<sup>98</sup> The CAS was

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88. James A.R. Nafziger, *Globalizing Sports Law*, 9 MARQ. SPORTS L. J. 225, 232 (1999).

89. Mattieu Reeb, *The Role and Functions of the Court of Arbitration for Sport (CAS)*, in *THE COURT OF ARBITRATION FOR SPORT 1984-2004* 31, 32 (Ian S. Blackshaw, Robert C.R. Siekmann, & Janwillem Soek eds., 2006).

90. *Id.* at 33.

91. *Id.*

92. *Id.* at 32-33.

93. *Id.*

94. *Id.* at 33-34.

95. Reeb, *supra* note 89, at 33.

96. *Id.* at 34.

97. *Id.*

98. *Id.*

consequently set up into an ordinary arbitration division and appeals arbitration division,<sup>99</sup> which changes can be seen in the Code of Sports-related Arbitration.<sup>100</sup>

The proposed changes that were made at the International Conference of Law and Sport were agreed to in Paris on June 22, 1994.<sup>101</sup> This agreement was signed by the “highest authorities” of the international sporting world: the IOC, Association of Summer Olympic International Federations (ASOIF), Association of International Winter Sports Federations (AIWF), and the Association of National Olympic Committees (ANOC).<sup>102</sup> Although all arbitration is governed by the Swiss Federal Act on Private International Law, the CAS has increased its physical presence around the globe by opening offices in the United States and Australia.<sup>103</sup> Since this agreement, the Swiss Federal Tribunal has not ruled in favor of any appeal that is based upon the principle of the CAS’s independence from a sports governing body.<sup>104</sup>

### 3. *Current State of the CAS*

The CAS got off to a slow start after its creation, but has since picked up steam.<sup>105</sup> It was not until the early part of the 2000s that FIFA and the International Association of Athletics Federations (IAAF) decided to make the CAS part of their organizational structure.<sup>106</sup> Now that FIFA and the IAAF have accepted the CAS as their appellate court, these organizations make up 30-40% of the caseload for the CAS.<sup>107</sup> The decisions by FIFA and the IAAF seem to have played a large part in the expansion of the CAS and were among major reasons the CAS has evolved into a legitimate international legal entity. Another factor that has drastically increased the caseload of the CAS is that it was chosen as the arbitrator responsible for resolving disputes arising out of the World Anti-Doping Code (WADC).<sup>108</sup> The CAS has experienced an increase in responsibility as the sporting world looks to it for leadership, and it is apparent that the global community has accepted the abilities of the CAS. Today the CAS averages between 250 and 300 cases every year.<sup>109</sup>

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99. *Id.*

100. *Id.*

101. Reeb, *supra* note 89, at 34.

102. *Id.*

103. *Id.* at 37-38.

104. Richard H. McLaren, *Twenty-Five Years of the Court of Arbitration Sport: A Look in the Rear-View Mirror*, 20 MARQ. SPORTS L. REV. 305, 309 (2010).

105. *Id.* at 315.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 316.

It seems that the majority of cases that come before the CAS involve doping or drug use<sup>110</sup> and a governing body imposing a punishment on an individual. This makes the comments of IOC President Jacques Rogge even more interesting; Rogge stated, ““In terms of the champions, there is always the threat of doping. In terms of management of sport, there is the threat of unethical practices.””<sup>111</sup> This implies that, at least as far as the IOC is concerned, the CAS was intended to have the authority to review corruption charges based upon the decisions of IFs and the IOC. Because of the relationship of the IOC and IFs, this should include all IFs that participate in the Olympics. However, Rogge’s statement does not go so far as to allow national bodies to challenge IFs or the IOC.

#### 4. Overview of CAS Procedures

In order for a case to even reach the CAS, the appellant must have exhausted all possible action within the appropriate governing body.<sup>112</sup> However, once a case makes it before the CAS, the CAS has substantial freedom in handling the dispute. According to the CAS code, the CAS panel is required to review the facts and legal consequences while making its decision.<sup>113</sup>

The appeals process consists of two stages: 1) a statement of appeal must be submitted to the CAS; and 2) the appellant must substantiate the appeal in an appellate brief to the CAS.<sup>114</sup> The appellee, coincidentally, responds to the appeal in two parts. First, the respondent must appoint an arbitrator if one has not been previously agreed to within ten days of receipt of the appellant’s petition.<sup>115</sup> If the appellee fails to appoint an arbitrator, the President of the appropriate CAS division shall make the appointment.<sup>116</sup> Second, the appellee must submit and answer any defense regarding lack of jurisdiction and any potential counterclaim within twenty days of the receipt of the appeal,<sup>117</sup> as well as specify evidence, witnesses, and experts.<sup>118</sup>

The arbitration panel has three options when hearing an appeal: uphold the decision, replace the decision with its own, or vacate the decision and

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110. See McLaren, *supra* note 104, at 316-322 for a discussion of the development of the jurisprudence of the CAS.

111. Jacques Rogge Calls for Corruption Fight, ESPN.COM (May 11, 2011), <http://sports.espn.go.com/oly/news/story?id=6525565> (quoting Jacques Rogge).

112. Christian Krähe, *The Appeals Procedure Before the CAS, in THE COURT OF ARBITRATION FOR SPORT 1984-2004*, at 99 (Ian S. Blackshaw, Robert C.R. Siekmann & Janwillem Soek eds., 2006).

113. *Id.*

114. *Id.*

115. *Id.* at 101.

116. *Id.*

117. *Id.*

118. Krähe, *supra* note 112, at 101.

remand the case to a lower authority.<sup>119</sup> The option to remand the case to a lower authority is seldom used because of the lack of efficiency and high costs associated with the process.<sup>120</sup> The decision of the CAS is binding on the participating parties.<sup>121</sup> In appropriate cases, the CAS may take provisional action.<sup>122</sup>

### 5. *Strength of the CAS*

The idea of an independent international tribunal like the CAS is ideal for parties in the international community. Unfortunately, these tribunals are only as enforceable as the participating parties are willing to accept. Consequently, CAS decisions are only enforceable in nations that have signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>123</sup> Every nation that bid for the 2018 and 2022 World Cups, however, was a party to this agreement.<sup>124</sup> Thus, any decision that may be handed down by the CAS would be binding on all of the participating nations in the bid process for the 2018 and 2022 World Cups.

Awards that are given pursuant to the CAS may only be challenged before the Swiss Federal Tribunal.<sup>125</sup> But even those challenges are limited to challenges on incorrect constitution of the arbitral tribunal, lack of jurisdiction, violation of the principle of equal treatment, or incompatibility with public policy.<sup>126</sup>

### 6. *Why a CAS?*

There is no flawless plan for an international tribunal. The perfection of our own system in the United States can be heavily debated, but there are certain advantages to the CAS that cannot be ignored. One of the advantages of CAS is the confidentiality the process provides.<sup>127</sup> CAS proceedings are private, have no public record, and happen without the media being informed about the proceedings.<sup>128</sup> This may be helpful to maintain the public perception of athletes and athletic organizations that are wrongfully charged. This can be extremely important for athletes because of the public perception that being a cheater creates and the mentality that has formed amongst the masses that athletes are guilty of cheating until they are

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119. *Id.* at 102.

120. *Id.*

121. *Id.* at 103.

122. *Id.*

123. Reeb, *supra* note 89, at 38.

124. See United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

125. Reeb, *supra* note 89, at 38.

126. *Id.*

127. *Id.*

128. *Id.*



able to prove they are innocent.<sup>129</sup> The interest and amount of litigation in sports worldwide has become so great that the mass publication of remote cases may cause the loss of interest or faith by the public. However, there are instances where the public interest may outweigh the CAS's obligation of confidentiality.<sup>130</sup> The CAS is also designed to be a quick process and allows flexibility of its procedures in order to maximize its practicality.<sup>131</sup> One of the main goals of the CAS is to provide low cost service to the parties without incurring excessive costs.<sup>132</sup> The creation of the CAS appears to have the interest of fairness being exemplified in sports regardless of a party's financial assets.

### III. CORRUPTION INVOLVED IN HOSTING THE OLYMPICS AND THE WORLD CUP

Becoming the host for the Olympics is an extremely elaborate process.<sup>133</sup> Hosting international competitions such as the Olympic Games and the World Cup is left up to committee elections,<sup>134</sup> and the competition for selection between host candidates is a high stakes competition. Chicago spent an estimated \$100 million on its Olympic bid and finished fourth out of four in the final vote for the 2016 Olympic Games, losing to Rio de Janeiro, Madrid, and Tokyo.<sup>135</sup> This is not the type of money that host candidates are looking to spend without a belief that they are going to be selected to host the event. Because of this intense competition, corruption has been a widespread problem in both the Olympics and World Cup.<sup>136</sup> There have been a few memorable recent controversies involving the selection of hosts for these prestigious events, including the 2002 Winter Olympics in Salt Lake City, Utah and the most recent World Cup selections of Russia and Qatar.

#### A. Salt Lake City

Salt Lake City, Utah was awarded the 2002 Winter Olympic Games in 1995, and three years later a corruption scandal broke in relation to the

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129. See generally Frank Deford, *On Heels of Cushing and Landis, All Sport is Guilty Until Proven Innocent*, SI.COM (May 26, 2010), [http://sportsillustrated.cnn.com/2010/writers/frank\\_deford/05/26/doping/index.html](http://sportsillustrated.cnn.com/2010/writers/frank_deford/05/26/doping/index.html).

130. Reeb, *supra* note 89, at 38.

131. *Id.*

132. *Id.* at 39.

133. See generally OLYMPIC CHARTER, Rule 5.

134. OLYMPIC CHARTER, Rule 35; FIFA STATUTES, Rule 76.

135. Aaron Smith, *Chicago Loses Olympic Bid to Rio*, CNNMONEY.COM (Oct. 2, 2009), [http://money.cnn.com/2009/10/02/news/economy/chicago\\_olympics\\_rejection/index.htm](http://money.cnn.com/2009/10/02/news/economy/chicago_olympics_rejection/index.htm).

136. See Richard H. McLaren, *Corruption: Its Impact on Fair Play*, 19 MARQ. SPORTS L. REV. 15 (2008).

city's obtaining of the games.<sup>137</sup> Allegations surfaced that members of the Salt Lake City Organizing Committee for the Olympic Games had given IOC members goods, services, contracts, educational benefits, employment of relatives, and as much as \$1.2 million in payments to agents of IOC membership blocs.<sup>138</sup> One example of kickbacks given to a voter was Jean-Claude Ganga from the Congo Republic: Ganga benefited greatly from the Salt Lake City corruption by receiving \$300,000 cash, medical treatment, travel expenses, doorknobs, and knee replacement surgery for his mother-in-law.<sup>139</sup> Ganga was ultimately forced to resign his from his position with the IOC.<sup>140</sup>

The election of Salt Lake City to host the 2002 Winter Olympic Games is not the only instance of irregularities in host city elections.<sup>141</sup> Irregularities were evident in the selections of Atlanta, Nagano, and Sydney.<sup>142</sup> Sydney paid IOC members \$35,000 apiece to ensure its two vote victory over Beijing to host the 2000 Summer Olympic Games.<sup>143</sup>

The success and popularity of the 2002 Winter Olympics is enough to demonstrate how the Salt Lake City Olympic scandal ended: The games stayed in Salt Lake. In fact, the investigation into the allegations revealed a complete disregard for the bidding process and the rules governing it for several previous Olympic Games.<sup>144</sup> The organizers of the Salt Lake bid were frustrated by other cities cheating and decided to "play the game."<sup>145</sup>

#### B. Olympic Response and Current Standards

These scandals ultimately prompted amendments to the Olympic Charter regarding the Olympic site-selection process, as the IOC adopted a Code of Ethics and formed an Ethics Commission to address issues of impropriety.<sup>146</sup> Rule 22 of the Olympic Charter creates the authority of the IOC's Ethics Commission.<sup>147</sup> The Ethical Standards of the IOC are outlined in the IOC Code of Ethics. The preamble of the IOC Code of Ethics states:

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137. NAFZIGER, *supra* note 28, at 31.

138. *Id.*

139. *Id.* at 31-32 (quoting Jere Longman, *Samaranch's Legacy: An Olympic Savior or a Spoiler?*, N.Y. TIMES, Sept. 10, 2000, at 33, 42).

140. *Id.* at 32.

141. *Id.*

142. Atlanta hosted the 1996 Summer Olympics, Nagano hosted the 1998 Winter Olympics, and Sydney hosted the 2000 Summer Olympics. *Id.*

143. NAFZIGER, *supra* note 28, at 32.

144. Tom Fordyce, *The Track Record on Olympic Corruption*, BBC.COM, [http://news.bbc.co.uk/sport2/hi/other\\_sports/olympics\\_2012/3939219.stm](http://news.bbc.co.uk/sport2/hi/other_sports/olympics_2012/3939219.stm) (last updated July 30, 2004).

145. *Id.*

146. NAFZIGER, *supra* note 28, at 33.

147. OLYMPIC CHARTER, Rule 22.

The International Olympic Committee and each of its members, the cities wishing to organise the Olympic Games, the Organising Committees of the Olympic Games and the National Olympic Committees (“the Olympic parties”) restate their commitment to the Olympic Charter and in particular its Fundamental Principles. The Olympic parties affirm their loyalty to the Olympic ideal inspired by Pierre de Coubertin.

Consequently, at all times the Olympic parties and, in the framework of the Olympic Games, the participants, undertake to respect and ensure respect of the present Code and the following principles: Dignity . . . Integrity . . . Resources . . . Candidatures . . . Relations with States . . . Confidentiality . . . Implementation.<sup>148</sup>

All of the IOC’s members are required to behave in a manner that is in accordance with the ethical standards of the IOC.<sup>149</sup> In addition to those standards, the IOC Code of Ethics also outlines the steps that the IOC Ethics Commission must take while investigating potential or alleged wrongdoing.<sup>150</sup> This structure was to lay the foundation for the Olympic Movement to maintain its integrity.

The IOC’s response to the Salt Lake City Scandal may not have been enough to deter participants from engaging in unethical behavior. The IOC seems to be committed to maintaining a system of protectionism,<sup>151</sup> which can be seen in the events following the tragic death of a Georgian luger at the 2010 Winter Olympics in Vancouver.<sup>152</sup> On the opening day of the Vancouver Games, a Georgian luger died while on a training run.<sup>153</sup> Following an investigation by the International Luge Federation (FIL), the FIL found that there were several interrelated events that had caused the tragedy, emphasizing driver error.<sup>154</sup> The FIL declined to make recommendations to the IOC to increase safety and the IOC declined to admit a mistake had been made by leaving exposed metal poles next to the track immediately after one of the fastest and most dangerous curves in luge history.<sup>155</sup> Instead, the IOC stuck to a policy of denial that protects the relationships of the IOC and IFs.<sup>156</sup>

From a business aspect, the IOC enjoys the freedoms provided by Swiss business laws, which are ineffective at governing the IOC as a

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148. IOC CODE OF ETHICS, pmb1.

149. OLYMPIC CHARTER, Rule 16.

150. *See generally* IOC CODE OF ETHICS, at 137-38.

151. Thomas A. Hamilton, *The Long Hard Fall From Mount Olympus: The 2002 Salt Lake City Olympic Games Bribery Scandal*, 21 MARQ. SPORTS L. REV. 219, 232 (2010).

152. *Id.* at 231.

153. *Id.*

154. *Id.* at 231-32.

155. *Id.* at 232.

156. *Id.*

corporation.<sup>157</sup> There are proposed reforms that may ultimately hold the IOC and IFs responsible for their business actions.<sup>158</sup> Until the reforms are passed, however, it will be nearly impossible to regulate these organizations.<sup>159</sup>

### C. Is History Repeating Itself?

The Olympic Games are by no means the only events subject to corruption. There are also questions surrounding the selection of the 2018 and 2022 World Cup host nations. FIFA and the IOC are not the same organization; however, there is a significant relationship between international federations and the International Olympic Committee.<sup>160</sup> Fortunately for FIFA, of the International Federations they are the least handicapped by the IOC's power.<sup>161</sup> Most International Federations are dependent on the IOC for the promotion of their sports,<sup>162</sup> but FIFA's World Cup is just as big as, if not bigger than, the Olympics.

The IOC announced they are going to investigate claims of corruption in FIFA.<sup>163</sup> However, the authority to investigate FIFA is only created by the relationships between IFs and the IOC. Although the IOC does not have any formal authority over FIFA in particular, there is some the IOC may exert over individual members and participating federations.<sup>164</sup> Because the IOC does maintain the ability to supervise its members, it may exert an investigation into their actions.<sup>165</sup> In this instance, FIFA's Executive Committee President, Joseph S. Blatter (Sepp Blatter) is a member of the IOC,<sup>166</sup> as well as one of the Vice Presidents of FIFA's Executive Committee, Issa Hayatou are members of both FIFA's executive committee and the IOC.<sup>167</sup>

Accusations of corruption within FIFA have since been made during a British parliamentary inquiry.<sup>168</sup> David Triesman, the former leader of

157. Hamilton, *supra* note 151, at 238.

158. *Id.*

159. *Id.*

160. Florian Charpentier, IOC and International Federations 1 (unpublished manuscript) available at [http://www.flo-charpentier.com/en/images/projet\\_ecrit/ioc\\_and\\_international\\_federations.pdf](http://www.flo-charpentier.com/en/images/projet_ecrit/ioc_and_international_federations.pdf).

161. *Id.* at 6.

162. *Id.* at 8.

163. *IOC to Pursue FIFA Corruption Claims*, CNN.COM (Dec. 1, 2010), <http://edition.cnn.com/2010/SPORT/football/11/30/football.fifa.panorama.ioc/index.html>.

164. OLYMPIC CHARTER, Rule 16.

165. *Id.*

166. *IOC Members*, OLYMPIC.ORG, <http://www.olympic.org/content/the-ioc/the-ioc-institution1/ioc-members-list/> (last visited Apr. 22, 2012).

167. *Id.*

168. *FIFA Asks for Scandal Evidence*, ESPN.COM, [http://espn.go.com/sports/soccer/news/\\_id/6526493/fifa-asks-england-football-association-world-cup-bidding-corruption-evidence](http://espn.go.com/sports/soccer/news/_id/6526493/fifa-asks-england-football-association-world-cup-bidding-corruption-evidence) (last updated May 11, 2011).

England's bid for the 2018 FIFA World Cup, told British lawmakers that four well-established FIFA officials had requested bribes to secure their votes for the host country selection.<sup>169</sup> In addition to that incident, British lawmakers were also informed via *The Sunday Times* that two FIFA officials, Issa Hayatou and Jacques Anouma, were paid \$1.5 million for their support of the Qatar bid to host the 2022 FIFA World Cup.<sup>170</sup> These two members of FIFA's Executive Committee were ultimately barred from the selection votes of the 2018 and 2022 FIFA World Cups.<sup>171</sup> FIFA's secretary general, Jerome Valcke, has since requested all documented evidence from the accusing parties,<sup>172</sup> and it is up to Valcke to request the FIFA ethics court open an official investigation into these allegations.<sup>173</sup> It is still not clear whether FIFA will conduct a formal investigation.<sup>174</sup>

Andrew Jennings is an investigative reporter that has been investigating FIFA for several years and gave a special report on corruption within FIFA on the British Broadcasting Company's (BBC) program *Panorama*.<sup>175</sup> In addition to outlining recent corruption scandals in FIFA, Jennings suggests that the leadership within FIFA does not care about corruption so long as the exchange of money is kept private.<sup>176</sup> The program also suggested that FIFA's Ethics Committee does not take allegations against FIFA's senior members seriously.<sup>177</sup> It is almost as if FIFA's Ethics Committee was implemented to create the illusion that FIFA is concerned about the integrity of its organization. Further, FIFA President Sepp Blatter stated in regard to ethics investigations that evidence should be "knowledgeable to us, by official means, or by official channels, [and] then naturally we would have a look on that."<sup>178</sup> FIFA is apparently unwilling to conduct its own investigations of its officials: FIFA will only take action if another organization that FIFA deems credible exhausts its resources to uncover the misdeeds of FIFA's members. It is unfortunate that national federations do not have the ability to stand up to FIFA and are forced to work within the questionable system that has been created.<sup>179</sup> It is not difficult to see why Salt Lake City felt compelled to join the bribery game in order to win its bid to host the 2002 Winter Olympics.

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169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *FIFA Asks for Scandal Evidence*, *supra* note 168.

175. *Panorama: FIFA's Dirty Secrets* (BBC television broadcast Nov. 29, 2010) [hereinafter *Panorama*]. A transcript of the broadcast is available at [http://www.transparencyinsport.org/Did\\_Blatter's\\_Mob\\_friends\\_fix\\_2018\\_for\\_Russia/PDF-documents/\(6\)fifas-dirty-secrets-script.pdf](http://www.transparencyinsport.org/Did_Blatter's_Mob_friends_fix_2018_for_Russia/PDF-documents/(6)fifas-dirty-secrets-script.pdf).

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

It appears that, in order to host the FIFA World Cup, national governments were required to submit to FIFA's demands. These demands, to FIFA's displeasure, were published by the Dutch and consisted of the suspension of visa rules, the suspension of workers rights, tax exemptions, the creation of new laws to protect FIFA's official sponsors, and a special set of rules for FIFA's access to the host country's legal system.<sup>180</sup> FIFA's demands are harsh. When the Dutch attempted to stand up to FIFA, FIFA responded with a strong letter stating they were putting their bid to host the FIFA World Cup at risk.<sup>181</sup>

One of the biggest examples of FIFA's questionable practices is *Guarantee No. 3*, which allows FIFA to operate within the host country without having to pay any taxes, and forbids the host country from passing any laws that levy taxes on FIFA or its subsidiaries.<sup>182</sup> This is a very detailed scheme that FIFA uses in order to maximize profit, even though FIFA claims to be and operate as a not for profit organization.<sup>183</sup> These demands leave us to wonder which national governments can even adhere to these demands, assuming, *arguendo*, that governments would even want to. FIFA is also secretive about the demands it makes. A senior member of the United Kingdom's Parliament requested to see to what the nation would be agreeing, but he was told that the guarantees were confidential<sup>184</sup>—apparently so confidential that the people responsible for the guarantees were not privileged enough to see them. Democratic nations would have a difficult time making these guarantees because of the secrecy FIFA requires. Observers of FIFA's requirements are left to wonder what the bigger purpose is behind secretive demands and if these demands are designed to make it easier for some countries to have more attractive bids than others.<sup>185</sup>

It would be easy for analysts to shrug off accusations of corruption during the selection processes of the 2018 and 2022 World Cups by countries who had losing bids. However, there have already been several instances where FIFA officials have been suspended because their

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180. *Id.*; Andrew Jennings, *The Documents that FIFA Doesn't Want Fans to Read*, TRANSPARENCY IN SPORT (Dec. 18, 2010), [http://transparencyinsport.org/The\\_documents\\_that\\_FIFA\\_does\\_not\\_want\\_fans\\_to\\_read/the\\_documents\\_fifa\\_does\\_not\\_want\\_fans\\_to\\_read.html](http://transparencyinsport.org/The_documents_that_FIFA_does_not_want_fans_to_read/the_documents_fifa_does_not_want_fans_to_read.html).

181. *Panorama*, *supra* note 175.

182. Guarantee Letter from the Government of the Netherlands to Fédération Internationale de Football Association (FIFA), Government Guarantee No. 3, 4, available at [http://www.transparencyinsport.org/The\\_documents\\_that\\_FIFA\\_does\\_not\\_want\\_fans\\_to\\_read/the\\_documents\\_fifa\\_does\\_not\\_want\\_fans\\_to\\_read-page2.html](http://www.transparencyinsport.org/The_documents_that_FIFA_does_not_want_fans_to_read/the_documents_fifa_does_not_want_fans_to_read-page2.html).

183. *Panorama*, *supra* note 175.

184. *Id.*

185. Jennings, *supra* note 180.

involvement in bribery and corruption was caught by the media.<sup>186</sup> For example, FIFA official Amadou Diakite was suspended for two years because he allegedly told reporters posing as bid lobbyists that Qatar bid officials had offered \$1 million to FIFA leaders from Africa.<sup>187</sup> Also, Nigeria's Amos Adamu was suspended for three years for soliciting bribes,<sup>188</sup> and Togo's Ahongalu Fusimalohi was suspended two years for advising the media how to bribe FIFA officials.<sup>189</sup> The multiple instances of caught corruption should lead a reasonable person to believe there may be more, they just have yet to be caught.

#### IV. ELIMINATING THE PROBLEM

The lack of authority demonstrated in *Reynolds* of a national court system to resolve disputes involving the IOC and IFs puts people subjected to the IOC's and IFs' internal rules in a precarious position because there is limited recourse for people to make claims against them.<sup>190</sup> Also, depending on which national governments have allowed themselves to have jurisdiction over the IOC or IFs could create a hostile and unnecessary game of international politics. It is also unrealistic to expect the IOC or an IF to criticize itself and create remedies to correct its own wrongdoing.<sup>191</sup> Consequently, the IOC and IFs are left to exert minimally-checked authority over people within the IOC and IFs' respective sports.

Although the power reserved by the IOC and IFs has minimal oversight, these international sports governing bodies no longer consider themselves to be completely immune to national judicial systems and no longer expressly prohibit appeals to national courts, accepting, in theory, the competence of national court systems.<sup>192</sup> However, the IOC and IFs that confer judicial power on themselves have taken the approach of using independent arbitration.<sup>193</sup> By conferring this authority to independent arbitration bodies, international sports governing bodies have been able, for practical purposes, to eliminate the opinions of national courts to resolve disputes revolving around international athletic competition.<sup>194</sup>

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186. *Amadou Diakite Appeals FIFA Ban*, ESPN.COM, [http://espn.go.com/sports/soccer/news/\\_id/6521474/suspended-fifa-official-amadou-diakite-appeals-ban-cas](http://espn.go.com/sports/soccer/news/_id/6521474/suspended-fifa-official-amadou-diakite-appeals-ban-cas) (last updated May 10, 2011).

187. *Id.*

188. *Id.*

189. *Id.*

190. David B. Mack, *Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes*, 10 CONN. J. INT'L L. 653, 681-82 (1995).

191. *Id.* at 682.

192. Pinna, *supra* note 44, at 391.

193. *Id.*

194. *Id.*



The CAS has recently become involved in the corruption scandal that is surrounding FIFA. Three suspensions of FIFA officials are currently being appealed,<sup>195</sup> but CAS has not yet set a date to hear any of these appeals.<sup>196</sup> In addition to the action pending before the CAS, FIFA president Sepp Blatter has expressed his interest in making FIFA as legitimate a governing body as possible. Blatter has instituted the idea of zero-tolerance for corruption as a platform for his reelection as president of soccer's governing body.<sup>197</sup> Although no action has yet been taken with respect to England's allegations regarding the 2018 FIFA World Cup, it is now apparent that FIFA will at least talk to the whistleblower about the allegations of buying votes for Qatar's bid for the 2022 FIFA World Cup.<sup>198</sup> Blatter would not specify what actions would be taken, but suggested that the Executive Committee-controlled Ethics Commission could be invoked and even left open the chance of reopening the election of a host nation for the 2022 FIFA World Cup.<sup>199</sup> However, in light of the previous leadership provided by Sepp Blatter, it is not clear how genuine this policy is. The policy cannot and should not be viewed as anything more than a campaign promise during Blatter's campaign to be reelected FIFA's president.

Since its creation, the CAS is gradually assuming a more prominent role in resolving international sports disputes. National federations have even begun to use the CAS as their highest level of appeal in lieu of their own national judicial system.<sup>200</sup> The important thing now is for the CAS to continue to grow. It may be necessary for the CAS to take on some prosecutorial duties, but the CAS, like the ethics commissions of IFs, relies on the IOC and IFs for its authority<sup>201</sup> and will unlikely be given the authority to tackle improper actions by IOC and IF officials. However, IF officials may be susceptible to CAS action if action is first taken by the IOC.

There is now a similar situation to what happened surrounding the 2002 Winter Olympic Games in Salt Lake City. In the situation currently evolving between the IOC and FIFA, there is no incentive for FIFA to legitimately concern itself with the IOC's investigation. FIFA has demonstrated that the Olympics and the IOC are not its principal concerns. FIFA shows complete disregard for how international law has developed or the structure of the IF and IOC relationship. The economic viability of FIFA is not dependent on the IOC like the majority of IFs are, and this allows

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195. *Amadou Diakite Appeals FIFA Ban*, *supra* note 186.

196. *Id.*

197. *Jacques Rogge Calls for Corruption Fight*, *supra* note 111.

198. *FIFA to Meet Qatar Bid Whistleblower*, ESPN.COM [http://espn.go.com/sports/soccer/news/\\_id/6565931/fifa-meet-qatar-2022-bid-whistleblower](http://espn.go.com/sports/soccer/news/_id/6565931/fifa-meet-qatar-2022-bid-whistleblower) (last updated May 19, 2011).

199. *Id.*

200. Krähe, *supra* note 112, at 104.

201. FIFA CODE OF ETHICS, Rule 18.

FIFA to act as an independent body equal to that of the IOC. If the CAS was able to assume a prosecutorial role with the backing of the international community (governments, national federations, and national olympic committees), it may be able to apply adequate pressure and backing to force FIFA and the IOC into cleaning up their organizations and proving they are run without outside and improper influences. However, this is dependent on the International Community joining together, and sporting disputes are rarely the main concerns of world leaders.

The decisions of the CAS are only enforceable because international sporting organizations have submitted to its use. Even though the Federal Swiss Tribunal has ruled that the CAS is independent of IFs and the IOC, the CAS would cease to exist without the submission of these organizations to its authority. Therefore, although the CAS may be structurally independent, its existence is entirely dependent and consequently checked by IFs and the IOC. The CAS cannot be seen as a tribunal that does not have an interest in the proceedings that come before it.

There does not seem to be an easy fix to problems facing the international sporting community. The global problems affected by the legal interactions between FIFA, the IOC, and the CAS are not a matter of life and death. Consequently, they will not necessarily get nor deserve the attention of our global leaders. We may be stuck with the system that we have and forced to rely on public pressure and private investigations to expose improper actions taken by these organizations.

The best hope for reform is for the media to keep shining light on these organizations and for national federations to band together and stand up for themselves. The British have appeared to be the leaders in both of these instances. The British media is responsible for bringing many of the most recent facts to the public, and England has even discussed leaving FIFA, though it has since decided against it.<sup>202</sup> Though leaving FIFA may be an extreme and unreasonable solution, organizing National Federations and National Olympic Committees may be the best way to create genuine change and purify the host site selection process. Without the support of national bodies, their international counterparts will lose all importance.

It is not unprecedented for parties involved in highly publicized international competition to participate in such collective action. The fight against doping in sport has required collective action from a variety of interested parties.<sup>203</sup> Although this is more of an example of the IFs from different sports banding together to create a common body,<sup>204</sup> it serves as

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202. Alex Varney, *Exclusive-Robertson Calls for FIFA Reform But Rules Out England Breakaway*, RADIO TALKSPORT (May 11, 2011), <http://www.talksport.co.uk/sports-news/football/euro-2012/7371/1/exclusive-robertson-calls-fifa-reform-rules-out-england-breakaway>.

203. Abbas Ravjani, Note, *The Court of Arbitration for Sport: A Subtle Form of International Delegation*, 2 J. INT'L MEDIA & ENT. L. 241, 265 (2009).

204. See generally *id.*

proof that federations can work together toward reaching a goal or, as in this case, eliminating a problem from their sport. This has been an efficient method of solving issues in the past and could effectively be called upon again.

The latest corruption scandal in FIFA may also have served as a turning point for the Swiss legislature. There is currently an initiative sponsored by Carlo Sommaruga, a Geneva-based lawmaker and member of the Swiss Socialist Party, which will make bribery of individuals a criminal offense.<sup>205</sup> However, it remains to be seen whether both houses in the Swiss Parliament view this as a significant problem.<sup>206</sup> Under Swiss law,<sup>207</sup> prosecutors have no legal authority to investigate bribery in sporting organizations.<sup>208</sup> This gives these organizations the freedom to operate as they wish and may even be a contributing factor in the selection of Switzerland as a headquarters.

#### CONCLUSION

Selecting hosts for the FIFA World Cup and the Olympics is an important and competitive process. However, like the competition within the field of play, it is important that the spirit of international competition be exemplified throughout the selection process. It may not always be possible to count on an international sports law system to protect the interests of all parties. In addition to the media's role of shining the spotlight on organizations such as the IOC and FIFA, it is imperative for participants and national organizations to stand up for themselves. These are the groups that make up international sports and should be able to hold their representative International Federations accountable for their actions. Also, it seems that those that host these organizations are beginning to get tired of being taken advantage of and may also begin to hold international sporting organizations accountable for their actions. Ultimately, there does not appear to be one single solution to the problem at hand, but maximizing transparency and not blindly following International Federations will create the fairest host site selection process.

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205. Carolyn Bandel, *FIFA Inspires Swiss Corruption Law Changes After Bribery Scandal*, BUSINESSWEEK (Jan. 19, 2012), <http://www.businessweek.com/news/2012-01-19/fifa-inspires-swiss-corruption-law-changes-after-bribery-scandal.html>.

206. *Id.*

207. Both the IOC and FIFA are headquartered in Switzerland.

208. Bandel, *supra* note 205.

