

**THE INTERNATIONAL OLYMPIC COMMITTEE'S
ACCOUNTABILITY FOR HARMFUL CONSEQUENCES OF THE
OLYMPIC GAMES: A MULTI-METHOD INTERNATIONAL
LEGAL ANALYSIS**

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*The International Olympic Committee's Accountability for
Harmful Consequences of the Olympic Games: A Multi-Method
International Legal Analysis*

Verantwoordingsplicht van het Internationaal Olympisch Comité voor
schadelijke gevolgen van de Olympische Spelen: Een multi-methode
internationaal rechtelijke analyse

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LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|--------|---|
| BRICS | Brazil, Russia, India, China, South Africa |
| CAS | Court of Arbitration for Sport |
| CNN | Cable News Network |
| COHRE | Centre on Housing Rights and Evictions |
| ECJ | European Court of Justice |
| EU | European Union |
| FIFA | Fédération Internationale de Football Association |
| GAL | Global Administrative Law |
| GANEFO | Games of the New Emerging Forces |
| IBRD | International Bank for Reconstruction and Development |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IDA | International Development Association |
| IF | International Federation (for sport) |
| ILO | International Labour Organization |
| IMF | International Monetary Fund |
| INGO | International Non-Governmental Organisation |
| IO | International Organisation |
| IOC | International Olympic Committee |
| LOCOG | London Organising Committee of the Olympic and Paralympic Games |
| MWC | Migrant Workers' Convention |
| NF | National Federation |
| NGO | Non-Governmental Organisation |
| NOC | National Olympic Committee |
| OCOG | Organising Committee for the Olympic Games |
| ODA | Olympic Delivery Authority |
| OGI | Olympic Games Impact reports |
| OP&Ps | Operational Policies and Procedures |
| SDO | Suspensions and Debarment Officer |
| TOP | The Olympic Partners |
| UEFA | Union of European Football Federations |
| UMVO | World Union of Olympic Cities |
| UN | United Nations |
| UNDHR | United Nations Declaration of Human Rights |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| USOC | United States Olympic Committee |
| VANOC | Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games |
| WADA | World Anti-Doping Agency |
| WBIP | World Bank Inspection Panel |
| WGI | Worldwide Governance Indicators |

Chapter One

Introduction, Scope, and Theoretical Framework of the Thesis

1. Introduction: @SochiProblems

Preparations for the 2014 Winter Olympic Games, like those of Olympic Games past (and likely, future), went down to the wire. Stories of unfinished infrastructure ran rampant as media members streamed into the Russian city of Sochi and the nearby Olympic venues of Adler (the ‘Coastal Cluster’) and Krasnaya Polyana (the ‘Mountain Cluster’).¹ This state of affairs in and around Sochi spawned the short-lived Twitter account @Sochiproblems, which on the eve of the Olympic Games had over 30% more followers than the official Sochi Winter Olympics Twitter account.²

Of all the possible reasons for the delays in construction, it is doubtful that a lack of manpower was one of them. Estimates of the number of construction workers employed to prepare Sochi for the Olympic Games reveal a virtual city at work. In 2011, a total of 56,000 workers had been employed to work on Sochi’s venues,³ with the number rising to 70,000 in 2012.⁴ Almost 700 contractors were responsible for these workers.⁵ Certainly, not all of these workers were recruited from the 340,000 inhabitants of Sochi. While some workers came from other parts of Russia, a significant percentage of these workers were migrant workers (i.e., a worker employed in a state where they are not a national).⁶ In 2012, Russia’s Federal Migration Service estimated that 16,000 workers (or about 23% of

¹ See, e.g., David Segal, ‘First Event of Sochi Olympics: The Hotel Construction Sprint’ *New York Times* (New

² Michelle Arrouas, ‘@SochiProblems is Way More Popular than the Official Sochi Account on Twitter’ *Time* (7 February 2014) <<http://time.com/6013/sochiproblems-is-way-more-popular-than-the-official-sochi-account-on-twitter/>> accessed 15 May 2014.

³ Sochi 2014 Organizing Committee, *The Olympic Games Impact: Summary Report* (2013) 25.

⁴ Human Rights Watch, *Race to the Bottom: Exploitation of Migrant Workers Ahead of Russia’s 2014 Winter Olympic Games in Sochi* (2013) 20.

⁵ Sochi 2014 Organizing Committee (n 3) 11.

⁶ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), A/Res/45/158, art. 2.1 (Migrant Workers Convention).

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workers) had come from beyond Russia's borders to work on Olympic-related construction projects.⁷ Others have claimed the number of migrant workers to be closer to 50,000, many without work permits.⁸

Workers at Sochi Olympic sites reportedly suffered from abusive employment practices. Human Rights Watch, a non-governmental organisation ('NGO'), uncovered employment practices such as non-payment of wages, long hours of work, and withholding of identification documents.⁹ These practices violated both Russian labour laws and international labour standards. Sochi has not been alone in witnessing large-scale labour rights violations while preparing to host a sports mega-event. Fears have been raised that conditions similar to those at Sochi will prevail at the sites of the 2018 Fédération Internationale de Football Association's ('FIFA') World Cup, which Russia is hosting.¹⁰ Brazil, host of the 2014 FIFA World Cup, and home to Rio de Janeiro's 2016 Summer Olympic Games, has had problems with worker safety, with multiple deaths at stadiums being constructed for the World Cup.¹¹ Concerns have also been raised about the treatment of migrant workers in Japan, in advance of the 2020 Tokyo Summer Olympic Games.¹² And, Qatar, host of the 2022 FIFA World Cup, has come under severe scrutiny for its employment practices from human rights NGOs¹³ and international trade union

⁷ Human Rights Watch, *Race to the Bottom* (n 4) 20.

⁸ Nataliya Vasilyeva, 'Migrant Workers at Sochi Olympic Sites Face Abuses' (*Yahoo!News*, 6 February 2013) <<http://news.yahoo.com/migrant-workers-sochi-olympic-sites-face-abuses-141644081--oly.html>> accessed 16 March 2015.

⁹ Human Rights Watch, *Race to the Bottom* (n 4) 20.

¹⁰ 'New "FIFA" Laws Strip World Cup Workers' Rights in Russia' (*International Trade Union Confederation*, 9 October 2013) <<http://www.ituc-csi.org/new-fifa-laws-strip-world-cup?lang=en>> accessed 10 July 2014. For the law in question, see O podgotovke i provedenii v Rossijskoj Federacii čempionata mira po futbolu FIFA 2018 goda, Kubka konfederacij FIFA 2017 goda i vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossijskoj Federacii [On the Preparation and Conduct of the Russian Federation 2018 FIFA World Cup, 2017 FIFA Confederations Cup and Amendments to Certain Legislative Acts of the Russian Federation] June 7, 2013, FZ-108 (Russia).

¹¹ Associated Press, 'Stadium Worker Dies in Brazil' *New York Times* (New York, 9 May 2014) B14.

¹² Suvendrini Kakuchi, 'Japan Seeks Foreign Workers, Uneasily' (*Inter Press Service News Agency*, 23 April 2014) <<http://www.wipsnews.net/2014/04/japan-seeks-foreign-workers-uneasily/>> accessed 14 May 2014.

¹³ Amnesty International, 'The Dark Side of Human Migration: Spotlight on Qatar's Construction Sector Ahead of the World Cup' (2013); Human Rights Watch, *Building a Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022* (2012).

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organisations.¹⁴ A complaint lodged with the International Labour Organization (‘ILO’) alleged general conditions of forced labour in Qatar.¹⁵

Labour rights violations are not the only problems that beset hosts of the Olympic Games. In many host cities, people are evicted from their homes to make room for stadiums, hotels, media centres, and transportation infrastructure used to support the Games. Hosting a major sporting event also places great strain on the local environment due to infrastructure construction, increased tourists flows, and so forth, which local officials cannot always cope with. Some editions of the Games have been held in countries that regularly violate human rights in a general manner, restricting freedoms of speech and movement, actively discriminating against certain populations, or engaging in regimes of terror. All of this has led to increased pressure on host cities and states, prospective hosts, corporate sponsors, and the international sporting organisations that hold the rights to these sporting events to prevent and remedy these problems.

2. The ‘Worst Outcomes’ of Hosting the Olympic Games

This thesis examines the accountability for the ‘worst outcomes’ of the Olympic Games, defined in Part 2.3. In particular, it casts its gaze at the International Olympic Committee (‘IOC’), the rights-holder to the Games. The apparently obvious solution to the problem would be for the IOC to require hosts to adhere to domestic laws and international obligations that protect against violations of human rights, and other negative outcomes that impact individuals. Unfortunately, this is not a realistic solution. First, it is possible that the IOC does not want to, or does not care to, require hosts to avoid these outcomes. Second, even if the IOC set out these requirements, it is possible that the IOC cannot, or does not want to, enforce them. This thesis will argue that the problem is not necessarily a lack of standards *per se*—although it is a problem—but is more a lack of monitoring and enforcement of these standards, or *accountability*, on the part of the relevant actors. In

¹⁴ International Trade Union Confederation, ‘The Case Against Qatar: Host of the FIFA 2022 World Cup’ (2014).

¹⁵ International Labour Organization, Governing Body, ‘Eighth Supplementary Report: Report of the committee set up to examine the representation alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29) made under article 24 of the ILO Constitution by the International Trade Union Confederation and the Building and Woodworkers International’ (GB.320/INS/14/8 2014).

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order to begin to address the worst outcomes of the Olympic Games, the overarching problem of a lack of accountability amongst the relevant actors needs to be examined.

The focus of this research will be on the IOC and the Olympic Games. Although there are many similarities between the Olympic Games and other sports mega-events, I have selected the IOC for examination because the Olympic Games are the world's premier sports mega-event.¹⁶ Additionally, the IOC is at the pinnacle of the global sporting system, namely the Olympic Movement. As such, actions undertaken by the IOC are likely to influence the decisions and processes of the sporting organisations operating under its umbrella.¹⁷ Thus, although the research focuses primarily on the Olympic Games, the findings in this thesis are relevant to other sports mega-events, and even other mega-projects more generally.

2.1. Defining Accountability

Throughout this thesis, I will refer to the concept of *accountability*. The term used in everyday speech without much thought given to what precisely it entails.¹⁸ Scholars have put forth a plethora of definitions of accountability.¹⁹ While a definition is needed, spending too much time parsing definitions runs the risk of undermining the efficiency of the research project, and suffocating the capacity of the researcher.²⁰ By using an already-existing definition of accountability, this work can also contribute to and build on the systematic, scholarly analysis engaged in by prior authors using a shared understanding.

¹⁶ Several attempts have been made to define a 'sporting mega-event'. See Wolfgang Maennig and Andrew Zimbalist, 'What is a Mega Sporting Event' in Wolfgang Maennig and Andrew Zimbalist (eds), *International Handbook on the Economics of Mega Sporting Events* (Edward Elgar 2012) 9–10; John Horne and Wolfram Manzenreiter, 'An Introduction to the Sociology of Sports Mega-Events' in John Horne and Wolfram Manzenreiter (eds), *Sports Mega-Events: Social Scientific Analysis of a Global Phenomenon* (Wiley-Blackwell 2006) 2; Maruice Roche, *Mega-Events and Modernity: Olympic and Expos in the Growth of Global Culture* (Routledge 2000) 1; J.R. Brent Ritchie 'Assessing the Impact of Hallmark Events: Conceptual and Research Issues' (1984) 23 *Journal of Travel Research* 2, 2. Regardless of the definition used, the Olympic Games are always perceived as a sporting mega-event.

¹⁷ Mary A. Hums and Joanne C. Maclean, *Governance and Policy in Sport Organizations* (3rd ed., Holcomb Hathaway 2013) 69.

¹⁸ Mark Bovens, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism' (2010) 33 *West European Politics* 946–47.

¹⁹ See, e.g., Jean-Loup Chappelet, 'Towards Better Olympic Accountability' (2011) 14 *Sport in Society* 319, 320; Bovens, 'Two Concepts of Accountability' (n 18) 946–48; Mark Philip, 'Delimiting Democratic Accountability' (2009) 57 *Political Studies* 28, 28–32.

²⁰ Barrie Houlihan, 'Accountability and Good Governance' in Jens Alm (ed) *Action for Good Governance in International Sports Organisations* (Play the Game/Danish Institute for Sports Studies 2013) 22.

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This research focuses on the IOC, an international actor. In light of this, I shall use the definition of accountability posed by international relations scholars Ruth W. Grant and Robert O. Keohane. ‘Accountability’, according to Grant and Keohane, is a situation where “some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met.”²¹ This definition is also useful as it has already been used in examining the accountability of FIFA, another international sports organisation, one that is second only to the IOC in global influence.²²

In essence, Grant and Keohane’s definition of accountability breaks down to four components. First, there is an actor that is to be held to account. This actor may be an individual, or may be an entity—a state, a corporation, or a NGO. The second component is the presence of an accountability forum, to whom is account to be rendered. This forum may be formal, such as a parliament, courts, or an ombudsperson. The forum may also be informal, such as monitoring by civil society, or reporting by the media. The forum may be internally agreed-upon, or may be externally-imposed. The third component of accountability is the existence of standards set out to which the actor is accountable for. These standards may be positive, requiring the achievement of a particular goal or following certain procedures, or negative, requiring the actor to refrain from engaging in certain activities. Finally, the fourth component of accountability is consequences for meeting or failing to meet the standards. Although Grant and Keohane use the term ‘sanctions’, I prefer the term ‘consequences’. Sanctions are generally limited to punishments for negative outcomes, while ‘consequences’ also considers rewards for positive outcomes.²³ Consequences may be formal, such as financial awards, disciplinary measures, civil remedies, or penal sanctions. Consequences may also be informal, such as positive or negative media coverage.

Accountability is different from liability. Liability connotes a legal obligation, while accountability does not require such an obligation.²⁴ As such, liability is a narrower

²¹ Ruth W. Grant and Robert O. Keohane, ‘Accountability and Abuses of Power in World Politics’ (2005) 99 *American Political Science Review* 29, 29.

²² Roger Pielke Jr., ‘How Can FIFA be Held Accountable?’ (2013) 16 *Sport Management Review* 255, 256.

²³ Bovens, ‘Two Concepts of Accountability’ (n 18) 952.

²⁴ Black’s Law Dictionary (3rd Pocket ed., 2006) 426.

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concept than accountability. Liability may be a mechanism of accountability, but the use of liability is problematic when examining international actors, as many international actors do not have obligations under international law, a situation that will be discussed in more detail in Chapter Four. The breadth offered by examining accountability opens up the study to consider options beyond traditional legal analysis.

2.2. (Un-) Accountability of International Sporting Organisations

Global organized sport has spent much of its history operating, and attempting to remain, outside of the purview of the state. It was only in the 1950s in the United States, or the 1970s in Europe, that the state put sporting organisations on notice that they could be subject to regulation.²⁵ Regulation of sport has largely been limited to economic matters, such as ensuring that organisations comply with antitrust/competition law, or European Union (‘EU’) rules on the freedom of movement of workers.²⁶

Otherwise, the state has been kept out of the governance of sport. A few factors have contributed to this situation. First, unlike international organisations (‘IOs’), international sporting organisations do not have states members that are involved in their governance. Second, international sporting organisations are high-universally headquartered in Switzerland, which is known for neutrality and a hands-off approach to oversight of organisations headquartered there. Third, international sporting organisations have actively fought against political ‘interference’ for years. All of this has fostered a belief in those who oversee sport that sport is exceptional.²⁷ Even governments have bought into the notion that sport is exceptional. This belief has been expressed in instruments such as the Treaty on the Functioning of the European Union, stating that the EU shall “take[] account of the specific nature of sport,”²⁸ and in a recent United Nations

²⁵ For an American example, see *Radovich v National Football League*, 352 U.S. 445 (1957) (finding that unlike professional baseball, professional football was subject to antitrust laws). For a European example, see Case C-36/74 *Walrave and Koch v Association Union Cycliste Internationale* [1974] ECR 1405 (holding that the practice of sport is subject to European Community law when it constitutes an economic activity).

²⁶ Simon Gardiner, John O’Leary, Roger Welch, Simon Boyes and Urvashi Naidoo, *Sports Law* (4th edn, Routledge 2012) 146.

²⁷ See Hans Bruyninckx, ‘Sports Governance – Between the Obsession with Rules and Regulation and the Aversion to Being Ruled and Regulated’ in Barbara Segaert, Marc Theeboom, Christiana Timmerman and Bart Vanreusel (eds), *Sports Governance, Development and Corporate Responsibility* (Routledge 2012).

²⁸ Treaty on the Functioning of the European Union (‘TFEU’) Article 165.

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resolution that “supports the independence and autonomy of sport as well as the mission of the IOC in leading the Olympic Movement.”²⁹ These factors have also led Ken Foster to label the sporting world as a ‘transnational autonomous legal order’, an idea discussed further in Chapter Three.³⁰

The autonomy of the global sporting movement has created a situation where international sporting organisations are unaccountable. From 2006–08, the NGO OneWorldTrust created indices to measure the accountability of various international actors: international organisations, international NGOs, and transnational corporations. The index measured transparency, participation in decision-making, organisation self-evaluation, and complaint-and-response mechanisms.³¹ The 2007 edition examined FIFA, while the 2008 edition measured the IOC. FIFA was found to be deeply unaccountable, ranking 24th out of 30 organisations measured, and at the bottom of the list of NGOs.³² The IOC performed even worse one year later, being ranked as the least accountable of the thirty measured organisations, ranking behind the Halliburton oil corporation, and the North Atlantic Treaty Organization military alliance.³³

Roger Pielke Jr. examined the accountability of FIFA in more detail. Pielke found that FIFA was largely unaccountable, except perhaps to market forces.³⁴ Namely, FIFA might face consequences through the withdrawal of sponsorships. This outcome has since come to pass, as sponsors did not renew their commitments with FIFA in 2014/15 in the wake of allegations of corruption.³⁵ However, FIFA is likely to obtain new sponsors, and will likely not be deeply affected. Pielke found that other avenues of accountability, such as the legal system, or influence of peer organisations, were limited at best in their application to FIFA. A similar analysis of the IOC would lead to a similar outcome.

²⁹ G.A. Res. 69/6, ¶ 8, U.N. Doc. A/RES/69/6 (Oct. 31, 2014).

³⁰ Ken Foster, ‘Is There a Global Sports Law?’ (2003) 2 Entertainment Law 1, 2.

³¹ Robert Lloyd, Shana Warren and Michael Hammer, *OneWorldTrust: 2008 Global Accountability Report* (2008) 5.

³² Robert Lloyd, Jeffrey Oatham and Michael Hammer, *OneWorldTrust: 2007 Global Accountability Report* (2007) 7.

³³ *ibid* 6.

³⁴ Pielke (n 22).

³⁵ Owen Gibson, ‘Scandal-Hit FIFA Lose Three More Major Sponsors’ *The Guardian* (London, 23 January 2015) <<http://www.theguardian.com/football/2015/jan/23/fifa-lose-three-sponsors-castrol-continental-tyres-johnson-and-johnson>> accessed 17 March 2015.

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2.3. The Worst Outcomes of the Olympic Games—A Story as Old as Olympus

The Olympic Games are a multi-year event that encompasses a broad range of activities. As such, when examining the Games, the particular aspect under consideration should be made clear. If this is not done, critiques of the Games, particularly in regards to broad issues such as human rights, run the risk of being over-generalized and conflated. As such, when I speak of human rights problems associated with the Games, I am dividing the problems into three categories: (1) those that occur around the Olympic Games, (2) those that are associated with sport, and (3) those that are caused by hosting the Olympic Games. While I will outline all three here, this research is concerned with the problems that arise in category number three.

A first category of human rights issues are those that occur around the Games. These are issues that exist in the host country, but are not connected to the Games themselves. For instance, a government may generally violate human rights. This was the case with the 1936 Berlin Summer Olympics, conducted under the auspices of the Nazi regime.³⁶ Post-War Olympic Games were held in countries engaged in a variety of practices that negatively impacted upon human rights. The 1968 Mexico City Summer Olympics witnessed the Tlateloco Massacre.³⁷ Afghanistan was invaded by the U.S.S.R. prior to the 1980 Moscow Summer Olympics, sparking a boycott by many Western states.³⁸ Afghanistan was invaded by the U.S. on the eve of the 2002 Salt Lake City Games, marking the second time it was invaded by the host of an upcoming Games, although this invasion did not spark a boycott. The 1988 Seoul Summer Olympics were awarded to a

³⁶ However, it must be noted that the Games were awarded to Germany in 1932 during the days of the Weimar Republic. The only other city in contention to host the Games was Barcelona. If the Games had been awarded to Barcelona, they would have been held at the onset of the Spanish Civil War. Certainly, the IOC could not have been expected to anticipate either the Nazi rise to power or the Spanish Civil War. Of the expectations this thesis has of the IOC, omniscience is not one of them.

³⁷ See David R. Black and Shona Bezanson, 'The Olympic Games, Human Rights and Democratisation: Lesson from Seoul and Implications for Beijing' (2004) 25 *Third World Quarterly* 1245, 1246.

³⁸ Scott Rosner and Deborah Low, 'The Efficacy of Olympic Bans and Boycotts on Effectuating International Political and Economic Change' (2009) 11 *Texas Review of Entertainment and Sports Law* 27, 46–50.

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military regime.³⁹ The 2000 Sydney Summer Olympics and the 2010 Vancouver Olympics featured heated debates over the treatment of aboriginal peoples.⁴⁰ The 2014 Sochi Olympic Games were overshadowed by a Russian law prohibiting the dissemination of “pro-homosexual propaganda”.⁴¹ And of course, the 2008 Beijing Olympics set off a host of protests regarding human rights concerns in China such as freedom of speech, religion, and the autonomy and independence of Tibet.⁴² These are problems that would exist whether or not the Olympic Games took place in that country. The IOC is not bound by international law, a topic that I will return to, and as such is not required by international law to ‘fix’ the human rights situations in any of these countries. It may be debatable, for instance, whether or not the Games should be awarded to countries that have significant human rights problems, or if the Games should be removed upon the discovery of human rights abuses. However, it is too much of a stretch that the IOC has a positive duty to improve the human rights situation in a host state.

A second set of human rights issues associated with the Olympic Games are those that specifically relate to the practice of sport. Consider for instance, the status of women at the Olympics. During the ancient Olympics, only free men who spoke Greek were allowed to compete in the Games, disenfranchising a sizeable segment of the population. More striking, married women were not allowed to watch the Games, on penalty of death, potentially because they were too ‘impure’ to witness the sacred rights.⁴³ Jumping forward to the twentieth century, women remain at the periphery of the Olympics. Although women were allowed to participate in the Olympics as of 1900, their participation was limited to only certain events. The 1928 Amsterdam Summer Olympics was a negative turning point

³⁹ Black and Bezanson (n 37); Julie H. Liu, ‘Lighting the Torch of Human Rights: The Olympic Games as a Vehicle for Human Rights Reform’ (2007) 5 *Northwest Journal of International Human Rights* 213, 220–23 (arguing that Olympic Games hastened South Korea’s transition to a democratic country).

⁴⁰ For Sydney, see Brett Neilson, ‘Bodies of Protest: Performing Citizenship at the 2000 Olympic Games’ (2002) 16 *Continuum: Journal of Media & Cultural Studies* 13. For Vancouver, see Christine M. O’Bonsawin, ‘“No Olympics on Stolen Native Land”: Contesting Olympic Narratives and Asserting Indigenous Rights Within the Discourse of the 2010 Vancouver Games’ in Russell Field and Bruce Kidd (eds) *Forty Years of Sport and Social Change, 1968-2008* (Routledge 2011).

⁴¹ See, e.g., Andrew Roth, ‘Athletes in Sochi to be Barred from Advocating Gay Causes’ *New York Times* (New York, 2 August 2013) B9.

⁴² Paul Close, ‘Olympiads as Mega-Events and the Pace of Globalization: Beijing 2008 in Context’ (2010) 27 *The International Journal of the History of Sport* 2976, 2988.

⁴³ See Nigel Spivey, *The Ancient Olympics* (Oxford University Press 2004) 119; Judith Swaddling, *The Ancient Olympic Games* (University of Texas Press 1999) 40–41.

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for women's participation. Eleven women participated in the 800m run. Reporters claimed that five of the women dropped out of the race entirely, and five more collapsed at the finish line, exhausted.⁴⁴ This claim either forced the hand of the IOC, or allowed the IOC to justify, barring women from long-distance running until 1960. For more than one hundred years, women struggled to participate in the same disciplines as men,⁴⁵ with the final barrier—ski jumping—falling only in the 2014 Winter Olympic Games. Difficulties have also arisen as National Olympic Committees ('NOCs'), the organisations for each country that sends athletes to the Games, have refused to send female athletes as recently as the 2012 Summer Olympics, necessitating the IOC's intervention.⁴⁶ Other issues such as sex-testing of female athletes also have human rights implications.⁴⁷ These issues are considered to be of a sporting nature, related to the conduct of sport, and are often referred to as the core of *lex sportiva*, rules within and for the system of sport.⁴⁸ For instance non-discrimination is enshrined in the Olympic Charter, and it is this provision that is applied to the participation of women in sport in recent years.⁴⁹ Rules such as these, argue sporting bodies and some academics, are not for domestic courts to weigh in on, and indeed, courts have often shied away from doing so.⁵⁰

⁴⁴ These claims have since been disputed. Jere Longman, 'How the Women Won' *New York Times Magazine* (23 June 1996) <<http://www.nytimes.com/1996/06/23/magazine/how-the-women-won.html?pagewanted=1>> accessed 20 March 2015; Roger Robinson, 'Eleven Wretched Women': What Really Happened in the First Olympic Women's 800m' (*Running Times* 14 May 2012) <<http://www.runnersworld.com/rt-columns/eleven-wretched-women>> accessed 20 March 2015.

⁴⁵ Olympic competitions are separated by sport, discipline, and event. A sport is an activity that is governed by an international federation for sport ('IF'). A discipline is a sub-element of the sport, which is comprised of one or more events. Thus, 'skating' would be a sport governed by the International Skating Union. The disciplines would be figure skating, short-track speed skating, and speed skating. The events would include, for instance, 10000m, 5000m, team pursuit, and so forth.

⁴⁶ Owen Gibson, 'Saudi Arabia Sends Women to Olympic Games' *The Guardian* (London, 12 July 2012) <<http://www.theguardian.com/sport/2012/jul/12/saudi-arabia-women-olympic-games>> accessed 19 March 2015.

⁴⁷ Emily J. Cooper, 'Gender Testing in Athletic Competitions—Human Rights Violations: Why Michael Phelps is Praised and Caster Semenya is Chastised' (2010–2011) *The Journal of Gender, Race and Justice* 233; Raheel Saleem, 'The Olympic Meddle: The International Olympic Committee's Intrusion of Athletes' Privacy Through the Discriminatory Practice of Gender Verification Testing' (2010) 28 *John Marshall Journal of Computer and Information Law* 49. See also Juliet Macur, 'Sex-Verification Policy Is Criticized as a Failure' *New York Times* (New York, 26 June 2012) B12.

⁴⁸ See Antoine Duval, 'Lex Sportiva: A Playground for Transnational Law' (2013) 19 *European Law Journal* 822, 827. Some authors view *lex sportiva* as solely located in judgements of the Court of Arbitration for Sport ('CAS'), see James A.R. Nafziger, 'Lex Sportiva' (2004) 4 *The International Sports Law Journal* 3.

⁴⁹ International Olympic Committee, Olympic Charter (2014) Fundamental Principles of Olympism ¶6, Rule 2.6.

⁵⁰ See *Sagen v. Vancouver Organising Committee*, 2009 BCCA 522; *Martin v. International Olympic Committee*, 740 F. 2d 670, 677 (9th Cir. 1984).

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The third category of human rights abuses, aligned with the focus of this research, are those that occur *as a consequence* of hosting the Games. The use of forced labour in Sochi to build Games-related infrastructure is but one example. Other examples that will be discussed in this thesis include displacement of persons to make way for Games-related infrastructure, and environmental damage caused by preparations to host the Games. These problems may be catalysed by underlying issues in a host country. For instance, if a country does not have strong labour laws, conditions of forced labour are more likely to arise than in a country with strong regime of labour rights protection. While this category might then be seen as substantially similar, if not identical, to the first category of human rights issues discussed, the difference is causation. For instance, if the Olympic Games were not hosted in Sochi, the demand for migrant workers would not have arisen, and workers would not have been abused. The same can be said for issues such as displacement of persons and environmental damage. While these problems do not have the same negative impact, I will broadly group them together for the ease of analysis, using the short form ‘worst outcomes’ of the Games.

This dissertation is concerned with the problems in this latter category. These problems are those that may arise as a result of hosting the Olympic Games, and that affect a broad section of the general population. These problems will be examined more thoroughly in Chapters Three and Four, where I examine the legal responsibilities of the IOC for the worst outcomes of the Olympic Games.

2.4. Research Questions

Summing up the discussion so far, the central hypothesis of this research is that the worst outcomes of the Olympic Games are symptomatic of a lack of accountability on the part of the IOC. Absent accountability, the IOC has no incentive to address these problems. To begin to remedy the problems, the accountability of the IOC needs to be improved. In establishing the relevant research questions, it must be noted that former IOC Vice-President and former President of the World Anti-Doping Agency (‘WADA’), Richard

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Pound posed similar questions in a short paper in 2011, to which my research questions owe an intellectual debt.⁵¹

To test the hypothesis that the IOC's lack of accountability is undermining its legitimacy, this thesis poses the following research questions:

1. Why should the IOC be the organisation that is accountable for the worst outcomes of the Olympic Games? Should other actors be held accountable?
2. To what extent is the IOC accountable? Why should the IOC choose to be more accountable than it currently is?
3. How might amending the process used to select the hosts of the Olympic Games improve accountability for the worst outcomes of the Games?
4. Are other accountability mechanisms within the broader world of international sport sufficient to improve the IOC accountability? If not, are alternative accountability mechanisms available to improve the IOC's accountability?

These questions will be supported by sub-questions in each chapter.

3. Theoretical Framework of the Thesis—Understanding Global Governance

To answer the research questions above, this thesis finds its home in the research of global governance. A significant problem examined by international legal and international relations scholars is the lack of accountability of global governance actors. Global governance actors exercise rule-making and institutional authority (i.e., power) at the global level, often over a particular issue area, such as the IOC does with sport.⁵² Decisions made by global governance actors increasingly have “direct legal consequences for individuals or firms without any intervening role for national government action.”⁵³ Some global governance actors, namely IOs, have states members, and thus may claim some degree of democratic accountability through the representative of the state keeping an eye

⁵¹ Richard W. Pound, ‘A Research Agenda for Olympic Reform’ (2011) 14 *Sport in Society: Cultures, Commerce, Media, Politics* 399.

⁵² Robert O. Keohane, ‘Global Governance and Democratic Accountability’ in David Held and Mathias Koenig-Archibugi (eds), *Taming Globalization: Frontiers of Governance* (Polity Press 2003) 132.

⁵³ Benedict Kingsbury, Nico Krisch and Richard B. Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68 *Law and Contemporary Problems* 15, 24.

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on the global governance actor.⁵⁴ However, other global governance actors, such as the IOC, are private actors. Without states members, there is no *ex ante* responsibility to states (or perhaps any other actor) whereby states set out mandates or procedural safeguards. In addition, there may be no *ex post* consequences for these private actors, as states may not be able to assert legal jurisdiction over these actors. As these actors are not considered ‘subjects of international law’,⁵⁵ international legal avenues are often foreclosed. As such, many global governance actors are perceived to be unaccountable.

Given the broad ambit of global governance, a few theoretical frameworks are useful to help make sense of the system. To understand how global governance actors operate in a general manner, this thesis relies on the international relations theory of constructivism. Although the political science theory of constructivism provides a lens in which to understand how international actors behave in a general manner, more specific theoretical frameworks are required to analyse global governance, and the IOC’s role and actions. To that end, this thesis relies on four theoretical concepts: constructivism, legitimacy, global administrative law (‘GAL’), and neoliberalism. These are discussed briefly below, and legitimacy and global administrative law are examined in greater detail in Chapter Two.

3.1. Constructivism and International Law

In the world of international relations, actors operate in an environment of anarchy. Constructivism conceives of this environment as one where the beliefs and interests of actors are not pre-determined, but are constructed through interactions with other actors.⁵⁶ Norms, identity, knowledge, and culture are elements that shape the interests of international actors, and these interests motivate the actions that international actors take.⁵⁷ Constructivism stands in contrast to other international relations theories, particularly of the realist and liberal strain, which focus on the self-interests of the actors involved (which is often further reduced to material interests), and the utility of these actions in fulfilling those

⁵⁴ *ibid* 26.

⁵⁵ Jan Klabbers, *International Law* (Cambridge University Press 2013) 67–68.

⁵⁶ Alexander Wendt, ‘Anarchy is What States Make of It’ (1992) 46 *International Organization* 391, 403.

⁵⁷ Peter J. Katzenstein, Robert O. Keohane and Stephen D. Krasner, ‘International Organization and the Study of World Politics’ (1998) 52 *International Organization* 645, 679.

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interests.⁵⁸ This is not to say that actors do not attempt to fulfil their self-interests, but that other concerns such as norms, identity, etc. constrain these choices.⁵⁹ Importantly for this research, constructivism also posits that relations are not static, but that changes can take place over time through the same process of social construction, although identities often tend to be ‘sticky’ and resistant to change.⁶⁰

Constructivism is able to play a role in international legal scholarship. In particular, constructivism’s focus on norms and social learning allows international legal scholarship to move away from the conception of ‘law’ as a positivist concept. It helps frame international law as a regime that is “constructed through rhetorical activities producing increasingly influential mutual expectations or shared understanding of actors.”⁶¹ Thus, international legal scholarship need not look only at treaties and enforcement, but also at aspects such as norm-generation and legitimacy.

A broader consideration of what constitutes international law is necessary to examine global governance actors. First, many global governance actors are not considered ‘subjects’ of traditional international law. A narrow, positivistic approach would exclude actors that are not states or IOs, ignoring organisations such as the IOC and its role in governance. Second, an examination of norm-generation and the day-to-day practice of international law allows for a movement away from treaties. Although formal agreements such as treaties should still be a central element of international law, as this thesis will show, expectations of behaviour are often shaped outside of formal treaties, and these instruments should also be considered, particularly in situations where treaties are absent or silent. Finally, when considering a concept such as accountability, which may be a formal exercise of power, or a relationship that is constructed between actors, a constructivist approach allows for a great degree of flexibility in considering how accountability may be constructed and exercised. As the IOC is an international actor that is non-traditional in many aspects, and has certainly engaged in reform activities based on changes in its

⁵⁸ John Gerald Ruggie, ‘What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge’ (1998) 52 *International Organizations* 855, 855.

⁵⁹ *ibid* 869.

⁶⁰ Charlotte Ku, *International Law, International Relations and Global Governance* (Routledge 2012) 12; Jutta Brunnée and Stephen J. Toope, ‘International Law and Constructivism: Elements of an Interactional Theory of International Law’ (2000–01) 39 *Columbia Journal of Transnational Law* 19, 33.

⁶¹ Brunnée and Toope (n 60) 65.

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identity and its interactions with outside actors, a constructivist theoretical approach is valuable to understanding the IOC.

3.2. Legitimacy

A central interest of international institutions is to exert their influence over other actors—to have other actors comply with their rules. There are several broad methods that an actor can use to create compliance. An actor can use coercion, threatening the use of force, or imposing sanctions. For instance, a state may freeze the assets of a corporation that is under investigation for fraud. An actor can also appeal to self-interest, rewarding compliant behaviour. This may be a monetary reward, for instance. However, these measures come with the risk of defection by the regulated actor. If the actor perceives the threat of coercion as too onerous, or the reward of compliance too low, they may set up another institution, or leave the institution altogether.

A more effective way to attain compliance is to foster a belief that the actor and its rules are legitimate.⁶² When actors believe another actor and its rules are legitimate, they possess an internal belief that the actor and its rules should be obeyed.⁶³ Just as legitimacy can be created, it can also be diminished. When an actor loses its legitimacy, it also faces a loss of compliance by other actors—in other words, it loses power. To avoid this situation, actors undertake a variety of activities to show to others that they should be seen as legitimate. Chapter Two will discuss the concept of legitimacy in greater detail, and some of the various methods that global governance actors use to foster a belief that they are legitimate. In particular, this dissertation will argue that the IOC has some shortcomings in regards to its legitimacy. Chapters Three through Five will examine the legitimacy of the IOC and of the Olympic Games.

⁶² *ibid* 70.

⁶³ Ian Hurd, *After Anarchy* (Princeton 2007) 30.

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3.3. Global Administrative Law

Global administrative law is a theory suggesting that global governance can be understood primarily as regulatory/administrative in nature.⁶⁴ Administrative actions are those “that are not legislative or primarily adjudicative in character.”⁶⁵ In the international environment, treaty-making is the rough equivalent to legislative acts, while adjudicative acts retain their standard definition of generalized episodic dispute resolution between parties (e.g., through the International Court of Justice).⁶⁶ But, treaty-making, and access to adjudicative bodies are generally limited to states and IOs (which are creatures of states).

Instead, many global actors, including states, regularly engage in global governance actions, namely the creation and application of standards, rules, and regulations. The IOC and other members of the Olympic Movement engage in such actions. The IOC will be discussed in more detail throughout this dissertation. However, a simple illustration can be shown through WADA, which has been discussed by GAL scholars. WADA issues rules and guidelines for anti-doping procedures. In theory, these rules do not require states to ‘sign-on’, like a treaty, but are instead considered binding by WADA, and all those who operate within its purview.⁶⁷ This was useful for WADA in its early years. WADA began operations in 1999, and although it had the support of states,⁶⁸ it was only in 2005 that states formally recognised WADA.⁶⁹ As part of the enforcement of the rules, an actor may be called upon to resolve disputes. In the world of sport, many disputes (e.g., over anti-doping rules and procedures, or selection for national teams) are submitted to the Court of Arbitration for Sport (‘CAS’). Notably, the mere presence of a dispute resolution forum, or other accountability forum, within a global administrative regime does not transform the regime from an administrative regime into an adjudicatory regime.

⁶⁴ Nico Krisch and Benedict Kingsbury, ‘Introduction: Global Governance and Global Administrative Law in the International Legal Order’ (2006) 17 *European Journal of International Law* 1, 1.

⁶⁵ *ibid* 3.

⁶⁶ Kingsbury, Krisch and Stewart (n 53) 17.

⁶⁷ World Anti-Doping Agency, *World Anti-Doping Code* (World Anti-Doping Agency 2015) 12.

⁶⁸ See, e.g., Copenhagen Declaration on Anti-Doping in Sport (2003) <https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_Copenhagen_Declaration_EN.pdf> accessed 1 July 2015.

⁶⁹ United Nations Educational, Scientific and Cultural Organization, *International Convention Against Doping in Sport* (19 October 2005).

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To address the lack of accountability amongst global governance actors, GAL turns to administrative law principles. Domestic administrative law focuses largely on procedure (i.e., of agency rule-making) to enhance administrative agency accountability to the public. Similarly, GAL also focuses on procedure, namely “mechanisms, principles, practices, and supporting social understandings” of administrative rule-making.⁷⁰ In particular, GAL focuses on three mechanisms to increase accountability: transparency, increasing participation in proceedings, and review (judicial or otherwise).⁷¹ These mechanisms will be examined throughout this thesis as they apply to the IOC.

3.4. Neoliberalism

The core ideology of neoliberalism is the achievement of free-market globalisation. In essence, neoliberal ideology posits that by removing state regulation over the market, resources will be efficiently allocated. This statement is inaccurate in two senses. First, instead of witnessing the withering away of the state to be replaced by a free-market globalized system, neoliberal practices often use the coercive power of the state to benefit capital.⁷² Second, neoliberal policies are often linked to market failures, social polarization, and uneven development.⁷³ Regardless of the disconnect between theory and practice, neoliberalism in practice is increasingly part of global governance. Similar to how services provided by states have become increasingly provided by private organisations, services provided by international organisations are also becoming increasingly outsourced to NGOs or corporations.⁷⁴

Neoliberalism informs this research as the Olympic Games are becoming increasingly associated with neoliberal practices. For instance, the IOC requires many

⁷⁰ Kingsbury, Krisch and Stewart (n 53) 27–28.

⁷¹ Kristin L. Retherford, ‘Regulating the Corporate Tap: Applying Global Administrative Law Principles to Achieve the Human Right to Water’ (2013) 88 *Indiana Law Journal* 811, 830.

⁷² Neil Brenner and Nik Theodore, ‘Cities and the Geographies of “Actually Existing Neoliberalism”’ (2002) 34 *Antipode* 349, 352.

⁷³ *ibid.*

⁷⁴ Craig N. Murphy, ‘Global Governance: Poorly Done and Poorly Understood’ (2000) 76 *International Affairs* 789, 795, citing Thomas G. Weiss and Leon Gordenker, eds. *NGOs, the UN, and Global Governance* (Lynne Rienner, 1996), and Thomas G. Weiss, ed., *Beyond UN Subcontracting: Task Sharing with Regional Security Arrangements and Service Providing NGOs* (Macmillan, 1998).

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changes in legislation by the host city to accommodate the Olympics and its sponsors.⁷⁵ Additionally, hosting the Olympic Games often brings about privatization of resources by the state. For instance, stadia built with public funds may be turned over to private organisations. This may be planned, or may occur when public authorities find themselves unable to cope with managing the facilities. A planned turnover is occurring in London, and involves the 2012 Summer Olympic Games stadium. Built at a cost of most than \$940 million, mostly from public funds, the stadium is being leased to the football team West Ham United as of 2016 for \$3.2 million per year, plus a one-time payment of \$23 million to offset conversion costs.⁷⁶ On the one hand, such a deal may be seen as a sensible legacy for the Olympic Stadium, guaranteeing a tenant, and an income stream, to prevent the stadium from becoming a ‘white elephant’. On the other hand, the deal is seen as unfairly benefitting the football team, and has been challenged as a violation of EU rules against state aid.⁷⁷

Neoliberalism is not a central theory to this research. Instead, neoliberalism acts as more of a background theory, a concern to keep in mind. While the IOC may be viewed as a neoliberal organisation, a private organisation exercising public regulatory power, the IOC is not necessarily market-driven. Instead, the situation may also be one of cities and countries using the IOC, and in particular the Olympic Games, to pursue neoliberal policies, discussed in Chapter Four.

4. Methodologies of the Thesis

This thesis draws on methodologies from both international relations, and from law. These methodologies are: (1) case study, (2) principal-agent approach, and (3) comparative legal methods. The case study methodology will be used to unpack the problem of legitimacy in

⁷⁵ See, e.g., Ryan Gauthier, ‘Major Event Legislation: Lessons from London and Looking Forward’ (2014) 14 *The International Sports Law Journal* 58; Mark James and Guy Osborn, ‘London 2012 and the Impact of the UK’s Olympic and Paralympic Legislation: Protecting Commerce or Preserving Culture?’ (2011) 74 *The Modern Law Review* 410; Stephan A. Stuart and Teresa Scassa, ‘Legal Guarantees for Olympic Legacy’ (2011) 9 *Entertainment and Sports Law Journal* 22.

⁷⁶ Owen Gibson, ‘Question of State Aid Still Lingers Over West Ham’s Luxurious New Home’ *The Guardian* (London, 20 April 2015) <<http://www.theguardian.com/football/2015/apr/20/west-ham-compensation-risk-state-aid-olympic-stadium>> accessed 28 April 2015.

⁷⁷ *ibid.*

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relation to the IOC and the Olympic Games. The other two methods are used to examine the accountability of the various actors responsible for organising the Olympic Games.

4.1. Case Study

This research is conducting a case study of the Olympic Games. A case study is an “empirical enquiry that investigates a contemporary phenomenon in depth and within its real-life context.”⁷⁸ Case studies are particularly useful when examining international relations and international legal phenomena, as large-n studies are often unavailable. Although case studies are often critiqued as a means of avoiding methodology altogether,⁷⁹ the method has seen a growth in sophistication in recent years. This research uses two particular case study methods: process tracing, and two-case comparisons.⁸⁰ Process tracing is an examination of a single case, using various hypothesized explanations. The researcher can then explain the case, but also test the hypothesis as to the case. Two-case, or ‘small-n’ comparisons are often divided into either ‘most-similar’ or ‘least-similar’ cases. This study uses a ‘most-similar’ comparison, discussed in more detail below.

The purpose of the case study method, as used here, is twofold. First, the case study uses theories of legitimacy and global administrative law to understand the phenomenon of the Olympic Games, and their worst outcomes. These theories are also applied to inform the understanding of the IOC as an actor. Second, the case study, by considering the IOC, hopes to inform the theories of legitimacy and global administrative law. The IOC is not a ‘traditional’ actor that has been examined in international law. This is largely due to old biases in international legal studies that are only now beginning to subside. In the past, NGOs were not seen as sufficiently important to examine, because they were not states or creatures of states, and not subjects of international law. In addition, the regime surrounding sport was seen as insufficiently serious to merit examination, a topic I

⁷⁸ Robert K. Yin, *Case Study Research: Design and Methods* (Sage 1989) 23.

⁷⁹ Andrew Bennett and Colin Elman, ‘Case Study Methods in the International Relations Subfield’ (2007) 40 *Comparative Political Studies* 170, 172; Zeev Maoz, ‘Case Study Methodology in International Studies: From Storytelling to Hypothesis Testing’ in Frank P. Harvey and Michael Brecher (eds), *Millennial Reflections on International Studies* (University of Michigan Press 2002) 164–65.

⁸⁰ See Andrew Bennett and Colin Elman, ‘Case Study Methods’ in Christian Reus-Smit and Duncan Snidal (eds), *The Oxford Handbook of International Relations* (Oxford University Press 2008) 502–04, 506–07.

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will return to in Chapter Two. However, the global authority that the IOC (a ‘mere’ NGO) wields, makes for what is perhaps a unique actor in global governance.

In carrying out the case study, this research relies on documentary evidence. Use of primary documents, namely those of the IOC that are used in organising the Olympic Games, are central to the analysis. These include legal documents such as the Olympic Charter or the Host City Contract, but also documents such as the questionnaires the IOC sets out for prospective host cities. Secondary literature is also used to obtain insight into the Games, particularly into the conduct of prior editions of the Games.

4.2. Principal-Agent Approach

In addressing issues of accountability, Chapter Six of this thesis uses a principal-agent approach. The IOC does not organise the Games itself, but delegates the task to three particular organisations—the OCOG, the Host City, and the host country’s NOC. Since it is these organisations that directly oversee the Games, they have a responsibility to ensure that the Games are carried out to the standards expected of the IOC.

A principal-agent approach assists in analysing situations when activities engaged in by agents do not line up with the wishes of the principal. In a sense, it is an examination of the accountability of an agent to a principal. Using such an approach also helps unpack problems created by having multiple actors engaged in an activity. If the IOC has provided a mandate to those who organise the Games to avoid some of the worst outcomes of the Games, and the agents are not fulfilling this mandate, a principal-agent approach may be able to address issues of accountability, and of ensuring that the organisers live up to their responsibilities.

4.3. Comparative Legal Methodology

This thesis engages in comparative analyses, both implicitly, and explicitly. Implicitly, it relies on a ‘vertical’ comparative analysis between domestic actors and international actors, while it explicitly engages in a ‘horizontal’ comparative analysis between international

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actors.⁸¹ Given that global administrative law as a theoretical framework relies on principles used in domestic administrative law, this thesis tacitly undertakes a comparative analysis between an international actor and domestic actors. This ‘vertical’ comparison is made most explicit in Chapter Five, as principles of transparency, public participation, and review, most often applied in the domestic setting, are applied to the IOC and its host city selection process.

This thesis engages in an explicit comparative analysis with the World Bank in Chapter Seven. This comparative analysis is undertaken as means of showing how other actors have coped with issues of legitimacy and accountability. By examining other actors, potential lessons can be drawn out that might inform solutions for the IOC. In engaging in a comparative analysis, the chapter uses a ‘functionalist’ approach, examining the World Bank as it has faced the problem of accountability for problems created by World Bank-financed projects. I will argue that this situation is similar to the one the IOC is currently facing. The mechanisms that the World Bank utilized to address the problem are compared with those at the IOC’s disposal.

5. Outline of the Book

This thesis will proceed over the course of seven further chapters, roughly split into two parts. The first part consists of Chapters Two through Five, and examines the legitimacy of the IOC and the Olympic Games. Chapter Two sets out the theoretical framework of the thesis, in terms of global governance and global administrative law. The IOC, like many other global governance institutions, relies on a perception of legitimacy to carry out its mission. Chapter Two defines legitimacy, and establishes a framework as to how the IOC’s legitimacy might be examined: structurally, substantively, and procedurally. It concludes by examining the symptoms of a possible legitimacy crisis for the IOC, and how it might use improvements in its accountability as a method to adapt and buttress its legitimacy.

Chapter Three examines the structural legitimacy problems of the IOC and the Olympic Games. This chapter serves as an introduction to the broader Olympic Movement

⁸¹ Aleksandar Momirov and Andria Naudé Fourie, ‘Vertical Comparative Law Methods: Tools for Conceptualising the International Rule of Law’ (2009) 2 *Erasmus Law Review* 291, 295.

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for the uninitiated. The role of other organisations and state governments is also considered. How this constellation of actors creates problems in establishing accountability is discussed, setting the stage for further analysis in Chapter Six. Chapter Four sets out the worst outcomes of the Olympic Games, and how those might affect the substantive legitimacy of the IOC and the Olympic Games. This chapter examines recent and contemporary editions of the Games, revealing problems such as abuses of labour rights, displacement of persons, and environmental damage. This chapter also sets out the particular problems created as the Olympic Games and other sporting mega-events are increasingly held in countries with poor records on human rights protection and accountability to their people. Chapter Five examines the process used to select the host of the Olympic Games, assessing the procedural legitimacy of the IOC and the Olympic Games. This chapter also marks the beginning of the shift of the thesis from examining legitimacy to examining accountability.

Chapter Six uses the aforementioned principal-agent framework to analyse the accountability of the various actors involved in organising the Olympic Games. Given the multiplicity of actors involved in the Olympic Games, this chapter asks the question: how does the IOC maintain control over the implementation of the Games? Attention will be paid to the mandate that the IOC provides, the monitoring it undertakes, and the consequences it imposes when the Games are not executed in an appropriate manner. How these mechanisms might be applied to avoid the worst outcomes of the Olympic Games is then considered. Chapter Seven then turns its focus to the IOC, examining a situation where, even in the presence of a mandate of human rights protection (which is not necessarily the case), the IOC still fails to ensure that human rights are respected. This chapter undertakes a comparative legal analysis with the World Bank, as the Bank had this precise problem thirty years ago. Comparing these two global administrative actors brings out similarities and differences that may provide options for the IOC to improve its accountability.

This thesis concludes with a series of reflections. Importantly, a reflection on the theories and methodologies used is required, given their novelty in being applied to the IOC. Avenues for further research are also suggested.

Chapter Two

Theoretical Basis of the Thesis: Global Governance and Legitimacy

1. Introduction

Before embarking upon an examination of the IOC and the Olympic Games, this chapter will discuss the theoretical background framing this research: global governance, and the legitimacy of global governance actors. To unpack the theoretical framework of this thesis, I pose three research questions. First, how do the IOC and the Olympic Games fit into the broader discussion on global governance? Second, what role does legitimacy play for global governance actors, and what interest might the IOC have in legitimacy? Third, how might legitimacy be conceptualised as a framework for measurement?

This chapter will proceed over three additional parts. Part Two outlines the concept of global governance, and discusses the IOC's place as a global governance actor. Part Three examines the concept of legitimacy. It defines legitimacy and outlines a framework with which to understand and evaluate legitimacy. This part also undertakes an initial look at the IOC's legitimacy, and questions whether the IOC is facing a crisis of legitimacy at this point in time. Part Four concludes the chapter.

2. Global Governance and the IOC

2.1. Global Governance

Global governance is the exercise of institutional authority at the global level.¹ In referring to 'institutions', I am using Samuel Huntington's definition of institutions as "stable,

¹ Robert O. Keohane, 'Global Governance and Democratic Accountability' in David Held and Mathias Koenig-Archibugi (eds), *Taming Globalization: Frontiers of Governance* (Polity Press 2003) 132.

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valued, recurring patterns of behaviour.”² This broad definition covers both the actual actor *qua* organisation, as well as the various rules, regulations, standards, procedures, etc. that it seeks to implement and enforce,³ both of which are examined in this work. Huntington’s definition also covers informal rules (e.g., norms), which will be discussed to a minor degree in the conclusion to this thesis. The two primary institutions are of interest in this thesis. First, the IOC, which is an actor, as well as an amalgam of rules. Second, the Olympic Games, which is not an actor, but is certainly an institution under Huntington’s definition, in that it is a collection of rules, regulations, and standards around a recurring event. I will use ‘institution’ generally, but will refer to ‘actors’ and ‘rules’ when it is necessary to differentiate.

The actual practice of global governance is a patchwork of various institutions. Actors that engage in global governance includes states, international organisations, corporations, and civil society groups (e.g., NGOs). The manner in which these various actors exercise institutional authority ranges from formal agreements such as treaties concluded by states to informal pressure from other groups.⁴ Of particular relevance to this research is that institutional authority is frequently exercised through actors engaging in rule-making and standard-setting. This situation appears to be analogous to domestic governments, where a significant degree of governance is carried out by administrative agencies who engage in rule-making, standard-setting, and the application of these rules and standards.⁵ However, unlike their domestic counterparts, many global governance actors (i.e., those who are not states) do not possess a monopoly on the legitimate use of violence, as opposed to states in a domestic setting.⁶

² Samuel Huntington, *Political Order in Changing Societies* (Yale 1968) 12. A similar definition has been used by constructivists, namely Alexander Wendt, who defined institution as a “relatively stable set or “structure” of identities and interests” that may be formal or informal. Alexander Wendt, ‘Anarchy is What States Make of It: The Social Construction of Power Politics’ (1992) 46 *International Organization* 391, 399.

³ *ibid.*

⁴ Keohane (n 1) 132.

⁵ See, e.g., Nico Krisch, ‘The Structure of Postnational Authority’ (2015) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2564579> accessed 08 May 2015; Kingsbury et al (n 53) 17; Michael N. Barnett and Martha Finnemore, ‘The Politics, Power, and Pathologies of International Organizations’ (1999) 53 *International Organization* 699, 699.

⁶ Allen Buchanan and Robert O. Keohane, ‘The Legitimacy of Global Governance Institutions’ (2006) 20 *Ethics and International Affairs* 405, 406.

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Decisions made by global governance institutions may directly affect/involve individuals, bypassing the state. This situation is common in the private sector, where individuals interact with corporations and the like on a daily basis—entering into contracts, and so forth. The state provides a backdrop of protection to these interactions, regulating certain types of contracts (e.g., rules to protect minors, or disclosure requirements for loans), and providing courts to adjudicate disputes. The particular concern with global governance actors is that they often exercise ‘public power’ akin to a state. This power is not necessarily negotiated between the individual and the global governance institution, as an interaction between an individual and a corporation would be. Instead, the power is generally exercised over an individual, as is that of a state. However, unlike a state, global governance institutions are not accountable to either ‘the people’ in a broad sense, or to affected individuals, for their actions.⁷

2.2. Global Administrative Law

One manner in which international lawyers have attempted to address the problem of the unaccountability of global governance actors is to conceptualise them as comparable to domestic administrative actors. As noted above, a significant amount of global governance is exercised through rule-making, standard-setting, and application—administrative actions. Historically, domestic administrative actors in liberal democracies have historically had a difficult relationship with accountability to those they affect.⁸ Similarly, global administrative law focuses on approaches that have been applied to domestic administrative actors to improve the accountability of global administrative actors, namely: increasing transparency of and public participation in decision-making, and review (judicial or otherwise).⁹ These approaches will be considered in regards to the IOC, particularly in Chapters Five, Six, and Seven.

⁷ Although Nico Krisch posits that accountability should be to ‘the people’ in a cosmopolitan sense, and to affected individuals, this approach is contested, particularly in regards to who the ‘the people’ are. Nico Krisch, ‘The Pluralism of Global Administrative Law’ (2006) 17 *European Journal of International Law* 247.

⁸ Richard B. Stewart, ‘The Reformation of American Administrative Law’ (1975) 88 *Harvard Law Review* 1667, 1670–71.

⁹ See Kristin L. Retherford, ‘Regulating the Corporate Tap: Applying Global Administrative Law Principles to Achieve the Human Right to Water’ (2013) 88 *Indiana Law Journal* 811, 830.

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Using global administrative law may also provide insights into how the IOC might ‘modernise’. The IOC was created in the late nineteenth century, and resembled many other international actors at the time. These actors often espoused broad norms of social improvement, were decentralised in nature, and were composed of members of the ‘leisured class’.¹⁰ Many of these vestiges can still be seen in the IOC today, from the values in the Olympic Charter, to the decentralised structure of the Olympic Movement, to the volunteer nature of the IOC Session members. The IOC began to professionalize not only the athletes who participated in the Olympics, but also their own operations, only in the wake of the 1984 Olympics, as a response to the commercialization of the Games.¹¹ This stands in contrast to IOs, and more modern global governance actors, which take a ‘functionalist’ approach, and more closely resemble modern administrative states. In this sense, the IOC can be seen as an actor that is ‘out-of-time’.

Global administrative law is not without its critics. A primary critique of GAL is that it focuses too narrowly on procedural law, leaving substantive law to the side.¹² Critics using this line of reasoning argue that it is folly to expect an institution to produce progressive outcomes in regards to human rights and similar issues without a strong, already-existing culture that views this mission as valuable.¹³ Indeed, it is possible that even with strong procedural mechanisms, the substantive impacts of institutional outcomes could be deleterious to individuals. However, the same can be said for the reverse situation. An environment where substantive rights are present, but procedural rights are absent, is one where individuals may or may not be able to assert those rights. Procedure and

¹⁰ Dan Bousfield and Jean Michel Montison, ‘Transforming an International Organization: Norm Confusion and the International Olympic Committee’ (2012) 15 *Sport in Society: Cultures, Commerce, Media, Politics* 823, 825–26; John Hoberman, ‘Toward a Theory of Olympic Internationalism’ (1995) 22 *Journal of Sport History* 1.

¹¹ Andrew Zimbalist, *Circus Maximus: The Economic Gamble Behind Hosting the Olympics and the World Cup* (Kindle edn, Brookings Institution Press 2015) ch 2, loc 408. See also Michael Payne, *Olympic Turnaround: How the Olympic Games Stepped Back from the Brink of Extinction to Become the World’s Best Known Brand* (Praeger 2006). For a critique of Payne’s book, see Rusty Wilson, ‘Book Review: Payne, Michael, *Olympic Turnaround: How the Olympic Games Stepped Back from the Brink of Extinction to Become the World’s Best Known Brand*’ (2005) 32 *Journal of Sport History* 426.

¹² Benedict Kingsbury, Nico Krisch and Richard B. Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68 *Law and Contemporary Problems* 15, 29.

¹³ B.S. Chimni, ‘Co-Option and Resistance: Two Faces of Global Administrative Law’ (2005) 37 *International Law and Politics*, 799, 801.

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substance go hand-in-hand, and procedures such as public participation may actually lead to a strengthening of the general culture in producing positive substantive outcomes.¹⁴

A second critique is that for a global administrative regime to function, a backdrop of law delineating the relationship between individuals and public authorities—in other words, a constitution—must exist.¹⁵ As such, perhaps a theory of global constitutionalism, or perhaps a global public law might be a more appropriate theory to examine the issue.¹⁶ This is not to say that global constitutionalism is in opposition to global administrative law. Many prescriptions of global constitutionalism are similar to those of global administrative law, such as adherence to due process, proportionality, legality, and transparency.¹⁷ The added value of a global constitutionalist mind-set is the placement of human rights protection at a core of international responsibilities.¹⁸ However, this research uses GAL for the same reason other scholars do so—not out of an ignorance or disdain for substantive law, but to narrow the field of inquiry.¹⁹ A focus on procedure moves the discussion away from a normative conversation as to what the substantive considerations should be. A shortcoming of some Olympic scholarship is the undue focus on the Olympic Charter, and its language of “promoting a peaceful society concerned with the preservation of human dignity,”²⁰ as a jumping point to argue that the IOC must broadly address human rights abuses in countries that host the Olympic Games. This argument has been made by both popular press,²¹ and academics, where some have suggested that the Olympic Charter has the status of customary international law.²² These discussions treat the Olympic Charter as

¹⁴ See, e.g., Jean Drèze and Amartya Sen, *India: Development and Participation* (2nd edn, Oxford University Press 2002) 10–11; Amartya Sen, *Development as Freedom* (Oxford University Press 1999) 5.

¹⁵ Ming-Sung Kuo, ‘Between Fragmentation and Unity: The Uneasy Relationship Between Global Administrative Law and Global Constitutionalism’ (2008-2009) 10 *San Diego International Law Journal* 439, 440.

¹⁶ *ibid.*

¹⁷ Anne Peters and Klaus Armingeon, ‘Introduction – Global Constitutionalism from an Interdisciplinary Perspective’ (2009) 16 *Indiana Journal of Global Legal Studies* 385, 388.

¹⁸ Anne Peters, ‘The Merits of Global Constitutionalism’ (2009) 16 *Indiana Journal of Global Legal Studies* 397, 399.

¹⁹ Kingsbury, Krisch and Stewart (n 12) 29.

²⁰ International Olympic Committee, *Olympic Charter* (2014) Fundamental Principles of Olympism ¶ 2 (Olympic Charter).

²¹ Nikki Dryden, ‘Will the IOC Play by its Own Rules at Sochi?’ *GlobeandMail* (Toronto, 28 August 2013) <<http://www.theglobeandmail.com/globe-debate/will-the-ioc-play-by-its-own-rules-at-sochi/article13994264/>> accessed 14 May 2014.

²² Paul Mastrocola, ‘The Lords of the Rings: The Role of Olympic Site Selection as a Weapon Against Human Rights Abuses: China’s Bid for the 2000 Olympics’ (1995) 15 *Boston College Third World Law Journal* 141, 147; David J. Ettinger, ‘The Legal Status of the international Olympic Committee’ (1992) 18 *Pace Yearbook of*

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a human rights instrument, rather than as the governing document of the Olympic Movement. Instead of spending time parsing the scope of human rights within the Olympic Charter, it is useful to recognise that other instruments exist, and can be used vis-à-vis the IOC, discussed in Part 3.2, below. Moving away from the issue of substantive rights thus frees up space to examine issues of accountability, in particular on how the IOC can improve its accountability, as opposed to why it should do so.

A third critique of global administrative law questions whether accountability can exist in a global administrative law system absent democracy.²³ A similar argument is made in regards to legitimacy, discussed below. However, this critique confuses the problem of accountability with one of representation. An accountability forum need not be a democratic forum. For instance, a funding agency such as the Bill and Melinda Gates Foundation may seek to hold a recipient accountable for the manner in which the funds are spent.²⁴ However, the Foundation is not itself democratically-accountable. Although this situation has raised concerns,²⁵ it does not pose a barrier to the Foundation seeking to hold others accountable. Returning back to the IOC, the CAS is an accountability forum, but one that is not democratic. Although a democratic accountability forum is ideal, democracy is not a necessary precondition for accountability.

2.3. The IOC as a Global Governance Actor

The IOC, as well as the broader Olympic Movement, is engaged in global governance. The IOC is a member and the head of the Olympic Movement. The Movement itself is a constellation of other sporting organisations, explained in more detail in Chapter Three. What is necessary to know now is that the Olympic Movement exercises almost monopolistic governance over sport, from the ‘grassroots’/amateur level to

International Law 97, 104 (citing James A.R. Nafziger, *International Sports Law* (1st edn, Transnational Publishers 1988) 34).

²³ David Dyzenhus, ‘Accountability and the Concept of (Global) Administrative Law’ [2009] *Acta Juridica* 3, 7.

²⁴ Grant and Keohane consider this mechanism, ‘fiscal accountability’ to be a mechanism of accountability in world politics. Ruth W. Grant and Robert O. Keohane, ‘Accountability and Abuses of Power in World Politics’ (2005) 99 *American Political Science Review* 29, 36.

²⁵ Valerie Strauss, ‘An Educator Challenges the Gates Foundation’ *The Washington Post* (Washington, 08 October 2014) <<http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/10/08/an-educator-challenges-the-gates-foundation/>> accessed 11 June 2015.

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elite/professional sport.²⁶ Much of the Olympic Movement is comprised of rule-setting organisations. For instance, the IFs for each sport set the ‘rules of the game’, but also enact rules regarding athlete eligibility (e.g., who can participate in a competition based on age, nationality, sex). The WADA is another actor, setting technical standards regarding anti-doping measures. Similar to many domestic administrative bodies, review or dispute-resolution mechanisms, whether within the IFs themselves (e.g., FIFA’s Dispute Resolution Chamber), or the CAS, aid these various rule-making actors in carrying out their work and holding them accountable. As the head of the Olympic Movement, the IOC is similarly engaged in the governance of sport.

More importantly for this thesis, the organising of the Olympic Games can also be seen as an exercise of global governance authority. The IOC is the rights-holder to the Olympic Games, and awards the right to host the Games to cities that meet various requirements set out by the IOC. The IOC uses an internal procedure, set forth in the Olympic Charter, and described in detail in Chapter Five, to select the host of the Olympic Games. This procedure is neither legislative, nor judicial in nature. Instead it can be understood as a rule-making (and application) procedure, in other words, an administrative procedure.

The Olympic Charter sets out the broad outline of the host selection process, while further steps in the host selection process detail the requirements of hosting the Games. For instance, the IOC requires hosts to implement stringent intellectual property/anti-ambush marketing laws,²⁷ or to guarantee that the various levels of government will make up for any financial shortfall of the Games.²⁸ After the Host City is awarded the right to host the Games, the host country duly passes laws to support the Games.²⁹ Some countries attempt to get ahead of the curve by passing relevant legislation in advance of even bidding to host the Games, to demonstrate how compliant with IOC rules and regulations they will be. For

²⁶ The Olympic Movement’s governance is not universal in scope. For instance, North American professional leagues for baseball, basketball, and ice hockey do not operate under the IFs that are part of the Olympic Movement, while professional golf is also organized largely outside of its IF. However, universality of application is not a requirement of global governance.

²⁷ See, e.g., International Olympic Committee, 2022 Candidature Procedure and Questionnaire: XXIV Olympic Winter Games (2014) 76–77.

²⁸ *ibid* 83.

²⁹ See, e.g., London Olympic Games and Paralympic Games Act 2006, c.12 (U.K.).

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example, Turkey has an Olympic Law, which establishes the primacy of the Olympic Charter.³⁰ Other countries and regions have legislation related to sports mega-events that is meant to not only relate to one particular mega-event, but to have an “evergreen” status.³¹ Some of these requirements by the IOC will impact individuals directly. For instance, local businesses may be ‘swept up’ under anti-ambush marketing measures, or individuals may be inadvertently harmed by onerous restrictions on ticket re-sale.³² Yet, individuals are less-often affected by particular IOC rules and standards, and are more affected by what I have labelled the worst outcomes of hosting the Olympic Games. Decisions taken by those who are tasked by the IOC to organise the Games may lead to harmful outcomes such as the use of forced labour to construct Olympic venues, the forced eviction of persons to make way for Olympic infrastructure, or environmental harms, which are described in more detail in Chapter Four. Thus, an event that the IOC holds the right to, and sets various rules and standards around, has the potential to significantly harm a number of individuals.

An important distinction between the Olympic Games and many other global governance institutions is that the IOC does not bypass the state, but often co-opts the state. In seeking to host the Olympic Games, the host city (and host country) demonstrates willingness to adhere to various IOC rules and requirements as part of the host selection process. Once selected to be the host of the Games, the host city enters into a contractual relationship with the IOC to organise the Olympic Games in accordance with the IOC’s requirements. As such, the host city acts as an agent to the IOC, a relationship examined in Chapter Six. Some scholars see this relationship as part of a broader neoliberal process, whereby a private actor (the IOC) relies on the state to provide resources (e.g., financial, infrastructural) for its benefit.³³ Regardless of whether or not the Olympic Games are part of such a process, the IOC’s relationship with the state puts the IOC in a position where it

³⁰ Code of Olympic Games to be Conducted in Istanbul City No. 3796 (Turkey).

³¹ Major Sporting Events Act, 2009, 30/2009 (Victoria, Australia); Major Events Management Act 2007, 2007 No. 35, s. 3 (New Zealand). For a discussion and a comparison of these acts, see Hayden Opie and Elizabeth Toomey, ‘Trans-Tasman Sport and Law—Some Observations’ (2010) 16 *Canterbury Law Review* 155.

³² Ryan Gauthier, ‘Major Event Legislation: Lessons from London and Looking Forward’ (2014) 14 *The International Sports Law Journal* 58, 64–65.

³³ Fernanda Sánchez and Anne-Marie Broudehoux, ‘Mega-Events and Urban Regeneration in Rio de Janeiro: Planning in a State of Emergency’ (2013) 5 *International Journal of Urban Sustainable Development* 132, 136; C. Michael Hall, ‘Urban Entrepreneurship, Corporate Interests and Sports Mega-Events: the Thin Policies of Competitiveness Within the Hard Outcomes of Neoliberalism’ (2006) 54 *S2 The Sociological Review* 59, 63–64.

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exercises public power through the state to benefit the Olympic Games, and those associated with the Games, including the IOC itself.

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As discussed above, global governance actors do not have recourse to violence to compel compliance with their decisions. This is not to say that global governance actors have no means of ensuring compliance. For instance, rules set by global governance actors often have consequences attached to non-compliance, with formal consequences such as suspension or expulsion from the regime (e.g., ‘black-listing’), or the imposition of financial penalties, or informal consequences such as reputation harm caused by being labelled a ‘defector’ from the regime.³⁴ However, compelling compliance through imposing consequences incurs high costs to the institution, and may lead to defection from the institution by affected actors. This situation requires a more consistent, long-term means of exercising institutional authority—legitimacy. This part will first define legitimacy. It will then explore how legitimacy may be constructed, and by whom it is constructed, with reference to the IOC throughout. This part will conclude by asserting that the IOC is facing a crisis of legitimacy, and outlining what the IOC’s options might be in coming to terms with this crisis.

3.1. Defining Legitimacy, and the Required Level of Legitimacy to Encourage Institutional Compliance

Legitimacy is the belief held by an actor that an institution (defined above as an organisation and its rules) ought to be obeyed.³⁵ An actor’s belief that an institution is legitimate fosters a normative pull towards compliance.³⁶ Legitimacy is not an absolute

³⁴ Buchanan and Keohane (n 6) 407.

³⁵ Ian Hurd, *After Anarchy* (Princeton 2007) 30. See also Ian Clark, ‘Legitimacy in a Global Order’ (2003) 29 *Review of International Studies* 79; Vivien Collingwood, ‘Non-Governmental Organisations, Power and Legitimacy in International Society’ (2006) 32 *Review of International Studies* 444.

³⁶ Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford University Press 1990) 24 (“Legitimacy is a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.”). Although Franck’s work deals with nation-

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condition, where an institution is either legitimate and is met with perfect compliance, or is illegitimate and met with constant non-compliance. Instead, legitimacy is a matter of degree.³⁷ Compliance with an institution may be imperfect, disregarded by some actors in some situations, yet the institution may be seen as generally legitimate.³⁸ For instance, the legal principle of *pacta sunt servanda* ('agreements must be kept') requires parties to a contract/treaty to keep those agreements. However, one party to a contract may renege on its obligations. This does not mean that the party considers the principle of *pacta sunt servanda* illegitimate, nor does it necessarily mean that the party considers the contract to be illegitimate. Instead, it is more likely that the party to the contract considers (and justifies) its withdrawal or failure to meet its obligations as exigencies, or anomalies, rather than a repudiation of the entire principle of *pacta sunt servanda* or the subject area that the agreement is regulating.

How much legitimacy must an institution 'possess' to engender compliance amongst actors that it seeks to influence? Three factors should be considered, which then provide a rough idea of how much legitimacy an institution will require to carry out its mandate. The first factor is the kind and degree of authority that the institution is exercising.³⁹ The more authority that an institution exercises, and the more that authority replaces the decision-making of those who are regulated, a higher amount of legitimacy is necessary to engender compliance. The second factor is the subject matter that is being regulated by the institution. A simple way to conceive of this factor is the traditional dichotomy of 'high politics' (matters of survival of the state—e.g., economy, security), and 'low politics'. The more the subject matter is an issue of 'high politics', the more legitimacy is required by the institution. However, this dichotomy is contentious, and should be used as a rough benchmark at best, as the example of the Olympic Games show. The third factor is the possibility of creating an alternative regime.⁴⁰ If no feasible

states, he does use the word 'institutions'. As such, his work should be seen as a product of his time, when international law and international relations were primarily concerned with states and only just beginning to address other actors, instead of a limiting factor, where legitimacy is only applicable to states.

³⁷ *ibid* 48.

³⁸ Hurd (n 35) 43–44.

³⁹ Daniel Bodansky, 'The Concept of Legitimacy in International Law' Rüdiger Wolfrum and Volker Röben (eds) *Legitimacy in International Law* (Springer 2008) 316.

⁴⁰ Buchanan and Keohane (n 6) 424.

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alternative to the institution is available, or can be created, an institution may possess a significant degree of legitimacy by default.

How much legitimacy might the IOC and the Olympic Games require in order to effectively compel compliance amongst those who it regulates? The mandate of the IOC is to “promote Olympism throughout the world and to lead the Olympic Movement,” which includes the promotion of the ethics and good governance of the Movement.⁴¹ Along with bodies such as the WADA and the CAS, the Olympic Movement exercises a significant degree of coordinating control over much of world sport independent from the state. As such, the IOC, and the Olympic Movement, can be said to exercise a high degree of authority. Similarly, the Olympic Games and the actors involved in organising the Games as an institution place many demands upon a host city (and host country), requiring various changes in legislation, financial support, logistical support, and so forth.⁴²

The subject matter that the IOC and the Olympic Games are primarily concerned with is sport. Sport has been traditionally viewed as ‘low politics’ by academics and politicians alike,⁴³ which can perhaps be best summarised in a quote from a 1960 British government report on sport, which stated: “To talk, as some do, as if sport could properly be used as a major instrument of international diplomacy, or as if a nation’s authority and influence in world affairs at large are to be measured by its successes or failures in the Olympic Games, seems to us to reveal a serious lack of sense of proportion.”⁴⁴ This view has been challenged over the years. Sport itself has been used as a proxy for Cold War competition,⁴⁵ and winning medals has been seen by some as evidence of soft power.⁴⁶

⁴¹ Olympic Charter (n 20) Rule 2.

⁴² See, e.g., Gauthier (n 32); Stephan A. Stuart and Teresa Scassa, ‘Legal Guarantees for Olympic Legacy’ (2011) 9 Entertainment and Sports Law Journal 22.

⁴³ Patrick M. Cottrell and Travis Nelson, ‘Not Just the Games? Power, Protest and Politics at the Olympic’ (2011) 17 European Journal of International Relations 729; Lincoln Allison and Terry Monnington, ‘Sport, Prestige and International Relations’ (2002) 37 Government and Opposition 106; Trevor Taylor, ‘Sport and World Politics: Functionalism and the State System’ (1988) 43 International Journal 531, 532.

⁴⁴ The Central Council of Physical Recreation, ‘The Report of the Wolfenden Committee: Sport and the Community’ (1960) 73.

⁴⁵ Cottrell and Nelson (n 43) 731; Allison and Monnington (n 43) 124.

⁴⁶ See, e.g., Joseph S. Nye, ‘The Olympics and Chinese Soft Power’ (*Huffington Post*, 24 September 2008) <http://www.huffingtonpost.com/joseph-nye/the-olympics-and-chinese_b_120909.html> accessed 30 June 2015; Piotr Maciej Kaczyński, ‘EU at the Olympics: An Invisible Powerhouse’ (*Auractiv*, 26 July 2012) <<http://www.euractiv.com/sports/eu-olympics-invisible-powerhouse-analysis-514166>> accessed 30 June 2015; Ernst & Young, ‘Rapid-Growth Markets Soft Power Index: Spring 2012’ (2012) 7. See also Allison and Monnington 43) 133.

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Hosting the Olympic Games has also been used as a component of nation-building, discussed further in Chapter Four.⁴⁷ While sport is arguably not ‘high politics’, the large number of people who participate in sport, the hundreds of millions who watch the Olympic Games on television,⁴⁸ the financial impact of sport,⁴⁹ and state demand to host the Olympic Games, demonstrate that sport cannot be dismissed as insignificant.

The Olympic Movement enjoys a high-monopolistic position in sport. It is unlikely that alternative regulatory sport actors will be created by states, or other entities, given the immense costs associated with competing with a regulatory monopoly. The same can be said about the Olympic Games. A variety of competitors to the Olympic Games, launched in response to particular grievances with the IOC and the Olympics, have come-and-gone. The Women’s Olympics and the Workers’ Olympics competitions ran during the 1920s and 1930s as a counter to the upper- and middle-class male-dominated Olympic Games.⁵⁰ The 1960s saw the short-lived Games of the New Emerging Forces (‘GANEFO’), held in protest of the IOC’s slower-than-hoped inclusion of post-colonial countries into the Olympic Movement.⁵¹ The Goodwill Games were first held in 1986, launched by Ted Turner (owner of the Turner Broadcasting System and the Cable News Network (‘CNN’)) after the boycotts of the 1980 and 1984 Summer Olympic Games. They too were not long for this world, cancelled after the 2001 edition. These events proved to be effective in highlighting grievances with the IOC and the Olympic Games, and often led the IOC to adopt changes, such as increasing the role of women in the Olympic Games, or including post-colonial countries in the Olympic Movement. However, that none of these

⁴⁷ David R. Black and Janis van der Westhuizen, ‘The Allure of Global Games for ‘Semi-Peripheral’ Politics and Spaces: A Research Agenda’ (2004) 25 *Third World Quarterly* 1195, 1198; Scarlett Cornelissen, ‘The Geopolitics of Global Aspiration: Sport Mega-Events and Emerging Powers’ (2010) 27 *The International Journal of the History of Sport* 3007, 3013.

⁴⁸ The IOC has projected that 3.6 billion people watched at least one minute of the 2012 Olympics broadcast. Sponsorship Intelligence, ‘London 2012 Olympic Games: Global Broadcast Report’ (2012) 4. Andrew Zimbalist has cited studies that critique these numbers as inflated, but acknowledges that the worldwide audience of the Olympic Games (and FIFA World Cup) is enormous, even if the numbers are exaggerated. Zimbalist (n 11) ch 4, loc 1001.

⁴⁹ For instance, sport represented 3.7% of EU GDP in 2004. European Commission, ‘Competition: Sports, Overview’ <http://ec.europa.eu/competition/sectors/sports/overview_en.html> accessed 13 May 2015.

⁵⁰ Roche (n 16) 94. *See also* Kevin B. Wamsley, ‘The Global Sport Monopoly: A Synopsis of 20th Century Olympic Politics’ (2002) 57 *International Journal* 395, 399.

⁵¹ Cornelissen (n 47) 3012.

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alternatives were long-lasting highlights the low likelihood of a feasible challenger to the IOC as an actor and the Olympic Games as the premier sports mega-event.⁵²

It would seem then, that the legitimacy the IOC and the Olympic Games require to carry out their mandate is at a moderate level. The level is likely higher than an average NGO, given its regulatory power. But, it is not as high as an intergovernmental organisation or IO, given the moderate importance of the sporting regime, and the difficulty in establishing an alternative regime. It is possible that the high-monopolistic nature of the IOC and the Olympic Games means that legitimacy is rather unimportant for the IOC and the Games. However, as will be discussed in Part 3.4, the IOC and the Olympic Games may be experiencing a problem with legitimacy.

3.2. Constructing A Legitimacy Framework

How does an institution establish legitimacy? Legitimacy is not constructed through coercion of an actor through the threat of the use of force, nor is it brought about through naked appeals to the actor's self-interest.⁵³ These actions are external motivations to compliance, rather than a fostering of an internal belief in compliance. How then, might an institution foster the belief that it is legitimate? At the level of the state, legitimacy has traditionally been conceptualised as being founded upon a social contract between the state and the people. So long as the state fulfils its role vis-à-vis the people—and conceptions of what that role may be differ amongst peoples and their states—the people confer legitimacy upon the state.⁵⁴ Some more recent works have posited that the legitimacy of the state depends less upon the fulfilment of a social contract and instead focuses on democracy.⁵⁵ Regardless whether state legitimacy is engendered through fulfilment of a social contract, or through democratic input, such conceptualisations do not translate well to the

⁵² Setting up competitor leagues in professional sport has also proven difficult, evidenced by the failure of competitors to the National Basketball Association, National Football League, and National Hockey League in North America. For an economics take on why this story plays out, see Xiao Gang Che and Brad R. Humphreys, 'Rival Sports League Formation and Competition' in Plácido Rodríguez, Stefan Késenne and Ruud Koning (eds), *The Economics of Competitive Sports* (Edward Elgar 2015). A similar story has played out in Europe in regards to football. See, e.g., Katarina Pijetlovic, *EU Sports Law and Breakaway Leagues in Football* (Springer 2015) 53–73.

⁵³ Hurd (n 63) 34.

⁵⁴ See, e.g., Collingwood (n 35) 448.

⁵⁵ Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?' (1999) 93 *The American Journal of International Law* 596, 599.

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international level. Namely, interactions between global governance actors and individuals are generally a one-way street, from actor to individual. Even if an institution could be reformed to be democratically accountable, problems arise. First, there is a lack of a global *demos*, a population with some sort of shared community, which would lead to any given minority to accede to majority rule. Second, the institution may be perceived as ‘too distant’ from the people, a problem that can be seen, for instance with the European Parliament and the recent elections for the Presidency.⁵⁶ As it stands, international organisations may claim to be legitimate through a chain reaching back through the member states to their citizens. If citizens legitimate the states, then states can legitimate IOs.⁵⁷ However, even if this is the case, which is arguable, this justification is not available for NGOs, such as the IOC which do not have states members. International actors such as the IOC, then, must rely on other means to establish their legitimacy.

Scholars have conceptualised various ways in which international institutions may establish legitimacy. Vivien Collingwood examined the actions that transnational NGOs undertook to assert their legitimacy: claiming that their activities enhance human development, claiming political and financial independence from states, relying on subject-matter expertise, associating with other legitimated actors (e.g., IOs), possessing an extensive membership base (states or otherwise), and relying on international legal norms.⁵⁸ Daniel Bodansky groups legitimacy into three types: source-based, procedural, and substantive.⁵⁹ Bodansky also suggests that public participation may act as a proxy for democratic input.⁶⁰ Ian Hurd focused on elements that are more closely related with the decision-making of NGOs: beneficial outcomes, fairness, and correct procedure.⁶¹ Alan Buchanan and Robert Keohane suggested three substantive criteria that global governance

⁵⁶ *ibid* 614–16. For European Union perspectives, see Dimitris N. Chrysoschoou, ‘Democracy and the European Polity’ in Michelle Cini (ed), *European Union Politics* (2nd ed, Oxford University Press 2007) 363–64. See also Andreas Follesdal and Simon Hix, ‘Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik’ (2006) 44 *Journal of Common Market Studies* 533, 536. It should be noted that the debate over whether or not a democratic deficit exists within the EU and what form it takes remains debated today.

⁵⁷ Nico Krisch, ‘Global Administrative Law and the Constitutional Ambition’ (2009) LSE Law, Society and Economy Working Papers 10/2009, 3 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1344788> accessed 30 June 2015.

⁵⁸ Collingwood (n 35) 447–48.

⁵⁹ Bodansky, ‘The Legitimacy of International Governance’ (n 39) 613.

⁶⁰ *ibid* 617.

⁶¹ Hurd (n 63) 67–72.

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institutions should fulfil: minimal moral acceptability, comparative benefit, and institutional integrity.⁶²

In drawing from the work of all of the above authors, I am suggesting a framework of three dimensions of legitimacy that are relevant to global governance institutions: (1) structural legitimacy, (2) substantive legitimacy, and (3) procedural legitimacy.

Structural legitimacy enquires into the basic framework of the institution. In doing so, this element draws from the ‘functionalist’ theory. Functionalism works with the premise that organisations are created to achieve a certain purpose.⁶³ Three questions in examining whether the structure of the institution is sufficient for achieving its goals are posed. First, what is the source of authority of the institution? Is the institution based on an international treaty, or through a private agreement? Does it come from popular consent, or was it primarily negotiated by elites?⁶⁴ Second, does the institution possess subject-matter expertise? If the institution does not possess subject-matter expertise, the question of whether a better actor would be suitable to exercise authority arises. Third, is the institution independent? Independence is considered vital to the operation of administrative bodies, and should be for global governance bodies as well. Finally, an actor should be representative of those whom it is regulating. If the ideal of some sort of global democracy, then representation within the actor (usually as part of some sort of assembly, committee, or board) should be available.

Substantive legitimacy examines the output generated by the organisation. It consists of two sub-elements, identified by Buchanan and Keohane. First, the organisation must fulfil a standard of minimal moral responsibility, which requires adherence to basic, minimal human rights standards. Organisations should *respect* basic human rights, but are not expected to necessarily *promote* these rights.⁶⁵ A conversation about what these basic human rights would include begins with the United Nations Universal Declaration of Human Rights (‘UDHR’), the International Covenant on Civil and Political Rights (‘ICCPR’), and the International Covenant on Economic, Social and Cultural Rights

⁶² Buchanan and Keohane (n 6) 419–24.

⁶³ Peter Wolf, ‘International Organization and Attitude Change: A Re-examination of the Functionalist Approach’ (1973) 27 *International Organization* 347, 348–49.

⁶⁴ See Bodansky, ‘The Legitimacy of International Governance’ (n 39) 612.

⁶⁵ Buchanan and Keohane (n 6) 420.

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(‘ICESCR’). Second, the organisation must possess a basic institutional integrity—fulfilling its mandate. This does not mean that an organisation can never fail in attempting to fulfil its mandate. Instead, legitimacy becomes a concern when an organisation displays “a pattern of egregious disparity between its actual performance, on the one hand, and its self-proclaimed procedures or major goals, on the other.”⁶⁶

Procedural legitimacy is established through organisations adhering to ‘correct procedure’ when making decisions.⁶⁷ This type of legitimacy can be seen as similar to the establishment of a basic rule of law defined as “government in all its actions is bound by rules fixed and announced beforehand.”⁶⁸ The more closely an organisation follows “correct procedure” when acting, the more likely its actions will be perceived as legitimate. Global administrative law provides insight into what may be considered elements of procedural legitimacy. Basic procedural elements for administrative law include rationality, consistency, and impartiality in decision-making.⁶⁹ However, these are relatively basic aspects of procedure, and lead to a situation where legitimacy may be established even if the rules themselves are biased or lead to unfair outcomes.⁷⁰ Thus, as discussed in Chapter One, the substantive rules do matter. However, to protect against negative substantive outcomes for individuals, global administrative law focuses on three accountability mechanisms: transparency, public participation, and the opportunity to have decisions reviewed. Chapters Three through Five of this thesis will focus on the legitimacy of the IOC and the Olympic Games.

⁶⁶ *ibid* 422.

⁶⁷ Bodansky, ‘The Legitimacy of International Governance’ (n 114) 612; Hurd (n 63) 71; Franck (n 36) 38.

⁶⁸ Friedrich A. Hayek, *The Road to Serfdom* (University of Chicago Press 1944) 54. See also, John Rawls, *A Theory of Justice* (Harvard University Press 1972) 235 (defining rule of law as “the regular and impartial administration of public rules”). Broader definitions of “rule of law” have been put forth, which encompasses elements such as democracy and human rights. See, e.g., Guillermo O’Donnell, ‘Why the Rule of Law Matters’ (2004) 15 *Journal of Democracy* 32.

⁶⁹ See Carol Harlow, ‘Global Administrative Law: The Quest for Principles and Values’ (2006) 17 *The European Journal of International Law* 193.

⁷⁰ Hurd (n 63) 71.

Fig. 1 – Legitimacy Framework

| Structural | Substantive | Procedural |
|--|---|---|
| <ul style="list-style-type: none"> • Source • Subject-matter expertise • Independence • Representativeness | <ul style="list-style-type: none"> • Minimal moral responsibility • Institutional integrity | <ul style="list-style-type: none"> • Decision-making <ul style="list-style-type: none"> ○ Rationality ○ Consistency ○ Impartiality • Accountability mechanism <ul style="list-style-type: none"> ○ Transparency ○ Public Participation ○ Review |

3.3. Losing Legitimacy

Legitimacy is not a static condition. Just as legitimacy can be strengthened, it can also be weakened. If an institution loses enough of its legitimacy, actors will reduce their compliance with the institution—using the language of international relations, the institution loses power. How might this power be measured? I suggest that power is two-fold: (1) the ability to influence other actors,⁷¹ and (2) the ability to remain autonomous.⁷² Applying these elements to the IOC, might there be concerns about the IOC’s legitimacy? I hypothesize that the Olympic Games as an institution is currently facing a crisis of legitimacy, which impacts the IOC as well. The symptoms of a diminution in legitimacy reveal themselves through the lack of bidders for the 2022 Winter Olympic Games, and the calls by governments and civil society organisations for more oversight over the IOC and the Olympic Games.

A loss of influence of the IOC and the Olympic Games can be seen when few cities bid to host the Olympic Games. For instance, following the problems with the 1968

⁷¹ See K.J. Holsti, ‘The Concept of Power in the Study of International Relations’ (1964) 7 Background: Journal of the International Studies Association 179, 182.

⁷² See, e.g., Michael Barnett and Raymond Duvall, ‘Power in International Politics’ (2005) 59 International Organization 39, 41–42.

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Mexico City Games (repression of student demonstrators), the 1972 Munich Games (terrorist attack), the 1976 Montréal Games (debt), and the move of the 1976 Winter Olympics from Denver to Innsbruck, demand to host the Games collapsed. The only cities interested in bidding to host the 1984 Games were Los Angeles and Tehran. Tehran withdrew on the eve of the Iranian Revolution, leaving Los Angeles as the sole bidder. With only one city bidding to host the Games, the IOC had no leverage,⁷³ and had to give in to Los Angeles' demands to host the Games on its terms—using venues used for the 1932 Games, and commercializing the Games. The 1984 Games were a modest financial success, making a profit of \$250 million.⁷⁴ The LA Games established the Olympics as a global commercial event, in contrast to the focus on amateur competition in prior years.⁷⁵

Recently, the IOC witnessed a similar collapse in demand to host the 2022 Winter Olympic Games. Initially, seven cities showed serious interest in bidding for the right to host the 2022 Games: St. Moritz/Davos, Munich, Stockholm, Krakow, Oslo, Beijing, and Almaty. Prior to the submission of the initial bids in November 2013, the St. Moritz/Davos and Munich (which had bid for the 2018 Winter Games) bids were defeated by public referenda.⁷⁶ Stockholm's municipal government decided that the Games were simply too expensive.⁷⁷ Krakow and Oslo had submitted bids, but dropped out of the process not long after. A referendum in May 2014 ended Krakow's Olympic aspirations, with 70% of voters against the Games.⁷⁸ Oslo's bid barely survived a local referendum in September 2013,⁷⁹ but then collapsed when the Norwegian government declared that it would not support the

⁷³ See Payne (n 11) 154 ("Once a city is elected, all leverage from the IOC and local organisers evaporates.").

⁷⁴ Zimbalist (n 48) ch 2, loc 410.

⁷⁵ *ibid.*

⁷⁶ 'St Moritz and Davos Winter Games Bid Rejected by Public' (*Reuters*, 3 March 2013)

<<http://www.reuters.com/article/2013/03/03/us-olympics-swiss-idUSBRE9220CK20130303>> accessed 30 June 2015;

'Missed Opportunity': Bavarians Reject 2022 Winter Olympics' (*SpiegelOnline International*, 11 November 2013) <<http://www.spiegel.de/international/germany/reaction-to-bavaria-voting-against-2022-winter-olympics-bid-a-933025.html>> accessed 30 June 2015.

⁷⁷ 'Stockholm Drops Bid for 2022 Winter Olympics' (*The Local*, 17 January 2014)

<<http://www.thelocal.se/20140117/stockholm-drops-bid-for-2022-winter-olympics>> accessed 30 June 2015.

⁷⁸ 'Krakow Withdraws 2022 Bid' (*ESPN.com*, 26 May 2014)

<http://espn.go.com/olympics/story/_/id/10984325/krakow-withdraws-2022-winter-olympics-bid> accessed 11 June 2015.

⁷⁹ Gwladys Fouche, 'Oslo Votes to Bid for 2022 Winter Games' (*Reuters*, 10 September 2013)

<<http://www.reuters.com/article/2013/09/10/us-olympics-norway-referendum-idUSBRE98907M20130910>> accessed 11 June 2015.

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bid in October 2014.⁸⁰ At the end of the host selection process, five cities in European, liberal-democratic states had strong intentions to bid to host the 2022 Games, and all five bids were scuttled following public referenda or withdrawal of government support. As the field shrank from five to two, leaving only Beijing and Almaty, the media labelled the 2022 Games: ‘The Games that Nobody Wants’.⁸¹

Adding insult to injury, Oslo’s withdraw from the Games was accompanied by a public rebuke of the IOC by the media over the various protocol demands of the IOC.⁸² These requirements of the IOC are not part of the bidding process, but host cities are expected to adhere to them. The publication of these requirements harmed the reputation of the IOC, strengthening a reputation that it is an out-of-touch, elitist organisation. The IOC’s public reprisal of the Oslo authorities did not help matters. The IOC stated that the Oslo bid committee did not send senior members of the bid committee or government to a meeting on technical and financial aspects of the Games, and that “senior politicians in Norway appear to not have been properly briefed on the process and were left to take their decisions on the basis of half-truths and factual inaccuracies.”⁸³

While 2022 may appear to be an anomaly, bidding to host the Olympic Games has decreased over the past two decades. The Summer Games have fallen from twelve cities bidding to host the 2004 Games, to five bidding to host the 2020 edition. The Winter Games, always constrained by geographical limitations, have seen a decline from nine bidders for 2002 to two for 2022. The Youth Olympic Games, despite an early enthusiasm, has seen a similar decline.

⁸⁰ Lynn Zinser, ‘Oslo Withdraws Bid to Host 2022 Winter Games, Citing Cost’ *New York Times* (New York, 2 October 2014) B13.

⁸¹ Berry Petchesky, ‘Nobody Wants to Host the 2022 Olympics’ (*Deadspin*, 27 May 2014) <<http://deadspin.com/nobody-wants-to-host-the-2022-olympics-1582151092/>> accessed 11 June 2015. See also Lisa Abend, ‘Why Nobody Wants to Host the 2022 Winter Olympics’ (*Time*, 03 October 2014) <<http://time.com/3462070/olympics-winter-2022/>> accessed 11 June 2015.

⁸² Cato Husabø Fossen, Pål Ertzaas, Lars Joakim Skarvøy, Eirik Mosveen, Answers K. Christiansen, Ole Kristian Strøm and Erik Linaker Berglund, ‘Oslo-OL kan bli to ukers pampefest: IOC krever gratis spirit på stadium og cocktail-fest med Kongen’ [‘Oslo Olympics may be Two Week Pampering Party: IOC Requires Free Drinks in the Stadium and a Cocktail Party with the King’] *Verdens Gang* (Norway, 1 October 2014) <<http://www.vg.no/sport/ol-2022/ioc-krevert-gratis-sprit-paa-stadion-og-cocktail-fest-med-kongen/a/23306598/>> accessed 16 July 2015.

⁸³ International Olympic Committee, ‘IOC Statement on Oslo 2022’ (1 October 2014) <<http://www.olympic.org/news/ioc-statement/238610>> accessed 29 April 2015.

Fig. 2 – Bids to Host the Olympic Games⁸⁴

| YEAR OF GAMES | HOST CITY | APPLICANT CITIES | CANDIDATE CITIES |
|----------------------------|----------------|---------------------|---------------------|
| <i>SUMMER GAMES</i> | | | |
| 2004 | Athens | 12 | 5 |
| 2008 | Beijing | 10 | 5 |
| 2012 | London | 9 | 5 |
| 2016 | Rio de Janeiro | 7 | 4 |
| 2020 | Tokyo | 5 | 3 |
| <i>WINTER GAMES</i> | | | |
| 2002 | Salt Lake City | 9 | 4 |
| 2006 | Turin | 6 | 2 |
| 2010 | Vancouver | 7 | 3 |
| 2014 | Sochi | 7 | 3 |
| 2018 | Pyeongchang | 3 | 3 |
| 2022 | Beijing | 3 | 2 |
| <i>YOUTH GAMES</i> | | | |
| 2010 | Singapore | -- | 9 |
| 2012 | Innsbruck | -- | 4 |
| 2014 | Nanjing | -- | 3 |
| 2016 | Lillehammer | -- | 1 |
| 2018 | Buenos Aires | 6 | 3 |
| 2020 | Lillehammer | 2 | 2 |

Populations and governments in liberal-democratic states appear to have become more critical of the consequences of hosting the Olympic Games and other sports mega-events. The bidding to host the 2022 Olympic Games occurred in the shadow of the Sochi Olympic Games, with all of its negative publicity involving human rights concerns,

⁸⁴ The Youth Olympic Games used a one-stage host selection process from 2010 through 2016.

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environmental damage, and its \$50+ billion price tag. Some of these outcomes are discussed in more detail in Chapter Four. Claims of corruption at other sporting bodies, notably FIFA, also likely harmed public perception of sporting bodies generally. In addition, human rights abuses related to the Sochi Olympic Games, and in Qatar, host of the 2022 FIFA World Cup, also likely soured public opinion on hosting sports mega-events. This does not discount other factors that contributed to the lack of bidders to host the 2022 Olympic Games. For instance, the number of bidders for the Winter Olympics is generally limited because of the particular climatic conditions required to host the Games. Additionally, governments in many advanced economies are still pursuing economic policies of ‘austerity’, i.e., cutting back on public spending. To then decide that the Olympic Games should be hosted in such a country likely strikes voters as inconsistent, if not hypocritical. For instance, Rome abandoned a bid to host the 2020 Summer Olympic Games based on arguments of austerity.⁸⁵ Similar arguments were used by the government of the Netherlands, in declining to bid for the Olympic Games, and in refusing in June 2015 to host the 2019 European Olympic Games.⁸⁶ Regardless of the reason, the reality is that less cities and states seeking to host sports mega-events means less leverage/influence for international sporting organisations.

The IOC’s (and the Olympic Movement’s) autonomy is also under pressure. The Parliamentary Assembly of the Council of Europe has called on sporting organisations to improve their governance.⁸⁷ The European Commission has pledged to work with sporting organisations to improve their governance.⁸⁸ Ministers of sport called for increased good

⁸⁵ ‘Rome’s 2020 Olympic Bid Scrapped’ (*ESPN.com*, 14 February 2012) <http://espn.go.com/olympics/story/_/id/7574333/rome-2020-summer-olympics-games-bid-scrapped-italy> accessed 30 June 2015.

⁸⁶ ‘Netherlands Pulls Out of Staging 2019 European Games’ *The Guardian* (London, 10 June 2015) <<http://www.theguardian.com/sport/2015/jun/10/netherlands-pulls-out-european-games>> accessed 11 June 2015. The European Olympic Games are a multi-disciplinary sporting event, governed by the European Olympic Committees, similar to the Pan-Asian or Pan-American Games. Of note, the hosts of the European Olympic Games are not selected through a formal bidding process, but a streamlined technical evaluation and vote by the European Olympic Committees. Mark Bisson, ‘EOC Clarifies 2019 Euro Games Bidding’ (*AroundtheRings*, 20 February 2014) <http://aroundtherings.com/site/A__46201/Title__EOC-Clarifies-2019-Euro-Games-Bidding/292/Articles> accessed 09 June 2015.

⁸⁷ Council of Europe Parliamentary Assembly Resolution 1875, ‘Good Governance and Ethics in Sport’ (2012).

⁸⁸ Commission, ‘Expert Group “Good Governance”, Deliverable 2: Principles of Good Governance in Sport’ (Sept. 2013) <http://ec.europa.eu/sport/library/policy_documents/xg-gg-201307-dlvrl2-sept2013.pdf> accessed 17 March 2015; Commission, ‘Organisation of Sport: Good Governance’ (*European Commission: Sport*, 27

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governance, and in particular transparency, of sporting organisations.⁸⁹ NGOs such as Play the Game and Transparency International have done likewise.⁹⁰ State governments are increasingly taking action as well. In May and June 2015, Switzerland and the United States formally launched investigations into corruption within FIFA, including into the awarding of the 2018 and 2022 World Cups.⁹¹ While the above problems are symptoms of a possible legitimacy crisis, the remainder of this research will examine the roots of the IOC's legitimacy, and whether the IOC should be truly concerned about its legitimacy.

3.4. Adapt or Die

When an institution is mired in a legitimacy crisis, it has two options: suffer a loss of power, or adapt to reclaim legitimacy.⁹² It is possible that in some cases, an institution is simply unable to adapt. It is also possible that an institution is overstretched and welcomes a loss of some power in order to return to its core competencies, or to have assistance from another institution in carrying out its mandate.⁹³ However, it is presumed that most institutions, faced with a choice of losing power or adapting, would choose adaptation if they could. Christian Reus-Smit posits that when an institution adapts, it has two options. First, an institution can draw on material sources of power, to coerce or bribe actors into re-affirming the institution's legitimacy.⁹⁴ However, as stated earlier in this chapter, while these actions may create short-term compliance, they are not actions that establish legitimacy. Second, an institution can redefine the "relationship between its social identity,

February 2015) <http://ec.europa.eu/sport/policy/organisation_of_sport/good_governance_en.htm> accessed 17 March 2015.

⁸⁹ UNESCO, *Declaration of Berlin* (SHS/2013/PI/H/8 REV) (2013), art. 2.43.

⁹⁰ Play the Game (*PlaytheGame*) <<http://playthegame.org>> accessed 17 March 2015; Deborah Unger, 'Sports Governance in the Spotlight' (Transparency International, 14 December 2014 <<https://blog.transparency.org/2014/12/10/sports-governance-in-the-spotlight/>> accessed 17 March 2015).

⁹¹ James Riach, 'FBI Investigating Fifa's Awarding of 2018 and 2022 World Cups – Report' *The Guardian* (London, 3 June 2015) <<http://www.theguardian.com/football/2015/jun/03/fbi-investigating-fifa-2018-2022-world-cup>> accessed 16 July 2015.

⁹² Kristina Daugirdas, 'Reputation and the Responsibility of International Organizations' (2014) 25 *European Journal of International Law* 991, 1008; Christian Reus-Smit, 'International Crises of Legitimacy' (2007) 44 *International Politics* 157, 167.

⁹³ See Laurence Boisson de Chazournes, 'Concluding Remarks – Changing Roles of International Organizations: Global Administrative Law and the Interplay of Legitimacies' (2009) 6 *International Organizations Law Review* 655, 656–57.

⁹⁴ *ibid.*

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purposes, and practices, and the prevailing social norms.”⁹⁵ In other words, the institution can take a hard look at itself in the mirror, ensure that its mandate is in line with society, and that its practices are in line with that mandate. One way to achieve this goal is to improve upon various elements of legitimacy.

The IOC has faced two legitimacy crises in the recent past, namely the ‘Festina Affair’ and the ‘Salt Lake City Scandal’ of the late 1990s. The ‘Festina Affair’ did not implicate the IOC directly, but as the head of the Olympic Movement, the IOC was pulled in. Prior to the 1998 Tour de France cycling race, government officials discovered performance-enhancing substances in a car belonging to the Festina cycling team. Subsequent investigations uncovered systemic doping amongst the teams at the Tour.⁹⁶ The outcry was so loud that the IOC convened a World Anti-Doping conference in February 1999. One of the outcomes of the conference was the early outlines of what was to become the WADA, formed on 10 November 1999.⁹⁷ Notably, states representatives fill half of the seats on the WADA board, and contribute to half of WADA’s budget, while the Olympic Movement constitutes the other half.⁹⁸ The creation of WADA can be seen as a means to ensure that the Olympic Movement met the substantive mandate of its members (including the IOC) that sport is conducted amongst clean athletes, reinforcing the ‘institutional integrity’ of the IOC and the Olympic Movement.

In late 1998, only months after the ‘Festina Affair’, news broke that Salt Lake City’s right to host the 2002 Winter Olympic Games was granted following corruption of IOC members. A Swiss IOC member, Marc Holder, revealed that IOC members were given lavish gifts from the Salt Lake City bid committee, including scholarships to Utah universities, money for medical treatment, and jobs for relatives of IOC members.⁹⁹ The United States Congress held hearings into the corruption allegations, also examining the

⁹⁵ Reus-Smit (n 92) 167.

⁹⁶ Dag Vidar Hanstad, Andy Smith and Ivan Waddington, ‘The Establishment of the World Anti-Doping Agency: A Study of the Management of Organizational Change and Unplanned Outcomes’ (2008) 43 *International Review for the Sociology of Sport* 227, 228–29.

⁹⁷ *ibid* 240–41.

⁹⁸ Constitutive Instrument of Foundation of the Agence Mondaile Antidopage/World Anti-Doping Agency (Revised Statutes, 4 July 2014) art. 6.

⁹⁹ Bill Mallon, ‘The Olympic Bribery Scandal’ (2000) 8 *Journal of Olympic History* 11, 14–15.

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actions of the bid committee that secured the 1996 Atlanta Summer Olympic Games.¹⁰⁰ The IOC reacted to the criticism by expelling six IOC members, sanctioning an additional ten, establishing an Ethics Commission, reforming the host selection process.¹⁰¹ The creation of the Ethics Commission can be viewed as enhancing the procedural legitimacy of the IOC, adding a review mechanism to ensure the impartiality of decision-making. The IOC Ethics Commission will be discussed in more detail in Chapter Seven.

The above examples provide evidence of threats to the IOC's influence and autonomy, but also of the IOC adapting to preserve its power. Similarly, the bidding to host the 2022 Winter Olympics is symptomatic of a possible legitimacy crisis for the IOC. Partially in response to the worst excesses of the Sochi Winter Olympic Games, new IOC president Thomas Bach initiated a reform process—Agenda 2020.¹⁰² Throughout 2014, the IOC engaged in internal discussion across fourteen working groups.¹⁰³ The IOC also solicited public comments, receiving 270 contributions from within and outside of the Olympic Movement.¹⁰⁴ The forty recommendations were published in November 2014, and unanimously approved by the IOC Session in December 2014.

Agenda 2020 sets out forty recommendations (or, in the terms of the document, 20+20 recommendations). Many recommendations have sub-recommendations. These sub-recommendations include specific recommendations for reforms of processes and

¹⁰⁰ See generally, *The Olympics Site Selection Process: Hearings before the Subcomm. On Oversight and Investigations of the House Comm. On Commerce*, 106th Cong. 1, (1999) (GPO.GOV) <<http://www.gpo.gov/fdsys/pkg/CHRG-106hhrg60363/html/CHRG-106hhrg60363.htm>> accessed 1 June 2015.

¹⁰¹ Mallon (n 99) 17–18.

¹⁰² International Olympic Committee, 'Olympic Agenda 2020: Context and Background' (2014) (Agenda 2020).

¹⁰³ These working groups were: (1) bidding procedure, (2) sustainability and legacy, (3) differentiation of the Olympic Games, (4) composition of the Olympic programme, (5) Olympic Games management, (6) protecting clean athletes, (7) Olympic channel, (8) Olympism in action (including youth strategy), (9) Youth Olympic Games, (10) Culture policy, (11) Good governance and autonomy, (12) ethics, (13) sponsorship, licensing and merchandising, and (14) IOC membership.

¹⁰⁴ Agenda 2020 (n 102) 1. The IOC states that 1,200 ideas were generated by these 270 contributions, amongst 43,500 emails. However, the IOC also states that in addition to the various 'submissions', 43,500 came from NGOs. *ibid* 2. Some submissions to the IOC have been made public by the organisation making the submission. E.g., Human Rights Watch, 'Human Rights Watch Submission to Olympic Agenda 2020: Integrating Human Rights in the Olympic Movement' (*Human Rights Watch*, 11 April 2014) <<http://www.hrw.org/node/253480>> accessed 17 July 2015; Austrian Olympic Committee, German Olympic Sports Confederation, Swedish Olympic Committee, Swiss Olympic Association, 'Olympic Agenda 2020: The Bid Experience' (June 2014) <https://www.dosb.de/fileadmin/Bilder_allgemein/Veranstaltungen/Olympische_Spiele/Dokumente/140612_OlympicAgenda_JointPaper.pdf> accessed 17 July 2015. However, public availability was not the case for many of the submissions. As such, the true extent of participation, and to what degree the IOC took the submissions into account is unclear.

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procedures, calls for action or deliberation on a topic, and broader aspirational goals. For instance, under Recommendation 1, which addresses the host selection process for the Olympic Games, sub-recommendation 6 calls for the “IOC to make the Host City Contract (HCC) public”, while sub-recommendation 7 calls for the “HCC to include details of the IOC’s financial contribution to the OCOG”.¹⁰⁵ More general calls to action include Recommendation 4, on sustainability of the Olympic Games, where sub-recommendation 3 calls for the “IOC to ensure post-Games monitoring of the Games legacy with the support of the NOC and external organisations such as the World Union of Olympic Cities (UMVO).”¹⁰⁶ Finally, a more aspirational goal might be seen in Recommendation 6, cooperation with other sports event organisations, where the IOC is called upon to “consider including...sports initiation programmes as part of the Olympic Games or Youth Olympic Games to trigger youth involvement”.¹⁰⁷

The standards set by Agenda 2020, which will be discussed in more detail in Chapters Five and Six, are encouraging. However, they may not be sufficient to prevent the worst outcomes of the Olympic Games. Additionally, they are too late to prevent some of the worst outcomes of Rio de Janeiro, for instance, and the reforms in regards to the bidding and host selection contract are being applied for the 2022 Winter Olympic Games. As such, it will take years for many of the Agenda 2020 reforms to bear fruit, particularly in regards to hosting the Olympic Games. Nevertheless, Agenda 2020 demonstrates that the IOC is willing and able to adapt in response to potential legitimacy crises.

4. Conclusion: Legitimacy and the Value of Accountability

This chapter began with three research questions inquiring into: (1) how the IOC and Olympic Games fit into global governance, (2) the role of legitimacy for global governance actors and the IOC, and (3) how legitimacy might be conceptualised as a framework for analysis. Certainly, the IOC is a global governance actors, and may be characterised more specifically as a global administrative actor. The IOC promulgates various rules and

¹⁰⁵ *ibid* 15.

¹⁰⁶ *ibid* 23.

¹⁰⁷ *ibid* 26.

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standards around the conduct of sport, and the Olympic Games is essentially the application of a collection of rules and standards surrounding a sporting event.

Legitimacy is of high importance to global governance institutions, for without being perceived as legitimate, those whom the institutions are attempting to influence are less likely to comply. Different institutions will require different levels of legitimacy to engender compliance. The level of legitimacy required depends on the type of authority that is being exercised, the regime under consideration, and the presence of a reasonable alternative to the institution. For instance, the IOC requires a moderate-to-high level of legitimacy because it exercises a high degree of central authority over sport. However, there are unlikely to be meaningful alternatives to the IOC, so the IOC perhaps has some leeway in how much legitimacy is required.

In considering legitimacy, this chapter discussed three elements: structural, substantive, and procedural. These factors make up a framework that can be used to examine the legitimacy of global governance institutions. Accountability mechanisms, a sub-component of procedural legitimacy, are perhaps the most important to analyse. First, they are the component that is most amenable to change. It is unlikely that the entire structure of an institution will be changed. While substantive standards could be lowered, to make them easier for institutions to meet, this is a sub-optimal solution. As such, accountability mechanisms are perhaps the best route to reform, by encouraging institutions to meet their substantive standards. Second, accountability mechanisms move institutions closer to a democratic ideal, discussed throughout this chapter. If democracy is a significant basis for legitimacy, then by moving closer to democracy (i.e., through an increase in public participation) the institution should increase its legitimacy.

Chapters Three, Four, and Five will examine the various elements of legitimacy as they apply to the IOC and the Olympic Games. Chapter Three will examine the structure of the IOC and the Olympic Games. Chapter Four will examine the substantive legitimacy of the Olympic Games, and whether they live up to the IOC's mandate and promises. Chapter Five will examine the procedural aspects of the Olympic Games, focusing on the host selection procedure, and will begin a transition into a discussion of accountability (and the accountability mechanism of review) in Chapters Six and Seven.

Chapter Three

Structural Legitimacy: The IOC, The Olympic Games and the Problem of Many Hands

1. Introduction: Governance Structure of the Olympic Movement

The aim of this thesis is to examine how to improve the IOC's accountability for the worst outcomes of the Olympic Games. The first step is to examine the structure of the IOC, and of the Olympic Games. This analysis can reveal possible structural problems that inhibit accountability. Additionally, considering the constructivist viewpoint of the research, analysing the IOC can further the understanding of the IOC's identity and interests, to understand why the IOC behaves as it does. The work in this chapter will set the basis for the remainder of the research.

The structure of the IOC has been discussed in detail before, particularly in Jean-Loup Chappelet and Brenda Kübler-Mabbott's book, *The International Olympic Committee and the Olympic System: The Governance of World Sport*.¹ Since the book's publication in 2008, much has happened. Olympic Games in Beijing, Vancouver, London, and Sochi came-and-went. Rio de Janeiro, Pyeongchang, and Tokyo were selected as future hosts of the Games. The inaugural Youth Olympic Games took place in Singapore in 2010, followed by editions in Innsbruck and Nanjing. The IOC elected a new president, as Jacques Rogge became the first IOC president to retire due to term limits, making way for current IOC President Thomas Bach. Following the Beijing Games, pressure on the IOC has increased to address issues such as human rights. And most recently, the IOC has undertaken a wide-ranging reform process, Agenda 2020. This chapter in no means aims to replace Chappelet and Kübler-Mabbott's work, but acts as an update, and an examination of the IOC with a particular focus on legitimacy and accountability.

¹ Jean-Loup Chappelet and Brenda Kübler-Mabbott, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge 2008).

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In examining the IOC, I seek to answer two research questions. First, who is actually responsible for what in regards to organising the Olympic Games? Second, does the structure of the Olympic Movement, and the IOC, satisfy the elements of structural legitimacy (source of authority, independence, and subject-matter expertise)?

This chapter will proceed in four additional parts. Part Two of the chapter will outline the Olympic Movement, the constellation of global sports bodies, of which the IOC is a part. Part Three will examine the structure of the IOC itself. In addition, it will examine the relationship of the NOCs to the IOC, the legal status of the IOC, and the core documents that the IOC uses in regards to the Olympic Games. Part Four will examine the Olympic Games themselves, and briefly discuss the roles of the various actors in putting on the Games. Part Five will conclude.

2. The Olympic Movement

Perhaps the most important role of the IOC is that it is the head of the Olympic Movement.² The Olympic Movement is a constellation of various actors, operating under, but also in collaboration with, the IOC. The actors within the Olympic Movement also play a significant role in the Olympic Games. Therefore, before examining the structure of the IOC in detail, or the Games, the Olympic Movement as a whole—and the IOC’s place within the Movement—will be outlined.

The Olympic Movement is defined by the IOC as “the concerted, organized, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism.”³ In more concrete terms, the Olympic Movement encompasses most of world sport, with the Olympic ‘system’ at its core.⁴ The members of the Olympic Movement include “organisations, athletes and other persons who agree to be guided by the Olympic Charter.”⁵ Not every sporting body across the world is part of the Olympic Movement. For instance, several of

² International Olympic Committee, Olympic Charter (2014) Fundamental Principles of Olympism ¶ 3, Rule 1.1 (Olympic Charter).

³ *ibid* ¶ 3.

⁴ Chappelet and Kübler-Mabbott (n 1) 5.

⁵ Olympic Charter (n 2) Rule 1.1.

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the North American professional leagues are not part of the Olympic Movement. The primary groups of organisations within the Olympic Movement, aside from the IOC, are: (1) the NOC; (2) the IFs; (3) the National Federations for sport ('NFs'); (4) and the Organizing Committees for the Olympic Games ('OCOGs'), professional leagues, and the athletes themselves.⁶ Other actors, such as officials, or those recognised by the IOC, are part of the Olympic Movement, but are ignored here for the sake of simplicity.

"Under the supreme authority and leadership of the IOC, the Olympic Movement encompasses organisations, athletes and other persons who agree to be guided by the Olympic Charter."⁷ The first article, or 'Rule', of the Olympic Charter sets out the position of the IOC in relation to international sport: that the IOC is at the apex of the global sport regulatory system, the Olympic Movement. The IOC will be discussed in more detail in Part Three of this chapter. The above system (IOC, NOC, IF, NF, and OCOG) has been termed the 'classical Olympic system' by Chappelet and Kübler-Mabbott.⁸

The NOCs carry out Olympic-related activities at the level of the state or territory (the word 'country' will be used from here out to denote both, for reasons explained in Section 3.2 below). NOCs are recognized by the IOC. NOC activities include, *inter alia*, organising and funding national sport, training sports administrators, overseeing implementation of the World Anti-Doping Code, selecting and sending athletes to the Olympic Games, and putting forth bids to host the Olympic Games.⁹ NOCs may be politically and financially independent from governments, and are required to be at least politically independent under the Olympic Charter,¹⁰ but are more often than not under at least some governmental control.¹¹ NOCs are also involved in hosting the Olympic Games, but this is more so in regards to sporting issues. NOCs have their own NOC-specific umbrella organisations, such as the Association of National Olympic Committees.

⁶ *ibid* Rules 1.2, 1.3.

⁷ Olympic Charter (n 2) Rule 1.1.

⁸ Chappelet and Kübler-Mabbott (n 1) at 7.

⁹ Olympic Charter (n 2) Rule 27.

¹⁰ *ibid* Rule 27.6 ("The NOCs must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal, religious or economic pressures which may prevent them from complying with the Olympic Charter.").

¹¹ Chappelet and Kübler-Mabbott (n 1) 54.

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Examples of NOCs would be the Canada Olympic Committee, or the recently-recognised Olympic Committee of Kosovo.

The IFs administer particular sports at the international level.¹² IFs that are recognized by the IOC can have their sport included in the programme of the Olympic Games, although recognition does not guarantee inclusion in the Games.¹³ IFs also work in associations of Summer Olympic IFs, Winter Olympic IFs, and IFs that are recognised by the IOC, but are not on the Olympic programme.¹⁴ In addition to administering their own sports, the IFs work with the IOC on issues related to the Olympic Games, such as offering opinions concerning the technical capabilities of the cities who wish to host the Olympic Games.¹⁵ IFs are independent from the IOC in theory, but since many IFs receive significant funding from the IOC, it is questionable as to how independent they are in practice.¹⁶ Examples of IFs would be the Union Cycliste Internationale, or International Ice Hockey Federation. NFs administer particular sports at the national level, and operate under the IFs. Examples would be USA Cycling, or Hockey Canada.

The OCOGs organize the Olympic Games. Set up *ad hoc* for each Olympic Games, OCOGs are temporary entities that are formed when the host city wins the right to host the Olympic Games, and disappear shortly after the conclusion of the Games. There is no one set structure for an OCOG. They are often subject to a great degree of state control, whether as a public body, or through the government's power of appointment or control over finances.¹⁷ The OCOG for the 2014 Sochi Olympic Games was subject to such a high degree of government control that it was headquartered in Moscow, not Sochi.¹⁸ Purely

¹² Olympic Charter (n 2) Rule 26.

¹³ The saga over the re-instatement of wrestling into the Olympic programme in 2013, despite its status as a “core sport” of the Olympic Games, provides an excellent example of the decision-making process to include a sport into the Olympic Games. See Jeré Longman, ‘Wrestling, With Revamped Rules, Returns to Summer Games’ *The New York Times* (New York, 9 September 2013) D9. There is currently a move from a ‘sport-based’ programme to an ‘event-based’ programme, which will likely allow for the inclusion of more IFs and their sports in the Games in the future. International Olympic Committee, ‘Olympic Agenda 2020: Context and Background’ (2014) 33–45 (Agenda 2020).

¹⁴ These are the Association of Summer Olympic International Federations, the Association of International Olympic Winter Sports Federations, and the Association of IOC Recognised International Sports Federations.

¹⁵ Olympic Charter (n 2) Rule 26.

¹⁶ Chappelet and Kübler-Mabbott (n 1) 68–69.

¹⁷ *ibid* 91.

¹⁸ Martin Müller, ‘State Dirigisme in Megaprojects: Governing the 2014 Winter Olympics in Sochi’ (2011) 43 *Environment and Planning* 2091, 2097.

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private OCOGs have existed, but are generally an American anomaly.¹⁹ Examples of OCOGs include the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games ('VANOC'), or the London Organizing Committee of the Olympic and Paralympic Games ('LOCOG').

Professional leagues and athletes work closely with the Olympic Movement, but are not always fully integrated. Professional leagues supply many of the athletes that participate in the Olympic Games and other international tournaments. Some of these leagues, such as those in football, work alongside the relevant IF and NF. Others, such as the North American leagues, operate more independently.²⁰ The IOC has recognized the distance from the professional leagues, and Agenda 2020 recommended that the IOC work more closely with professional leagues in the future.²¹ Similarly, athletes are certainly considered members of the Olympic Movement when they participate in events such as the Olympic Games, or events sanctioned by IFs or NFs (e.g., Olympic qualifying events, or other tournaments). However, it may be a bit of a stretch to say that a professional ice hockey player, in the NHL, is a full-time member of the Olympic Movement.

To show how these entities work together in practice, I will use the example of curling in Canada. At the top of the pyramid is the IOC, which oversees the Olympic Games, and provides some funding to the other bodies. Working alongside the IOC is the NOC, the Canadian Olympic Committee, which is responsible for sending Canadian athletes to the Olympic Games, and for administering sport in Canada. The relevant IF in this example is the World Curling Federation, based in Perth, Scotland, one of the few IFs not in Switzerland. The World Curling Federation's goals are to formulate the rules of curling, to conduct world championships, and to develop the sport of curling globally.²² The World Curling Federation works with an NF in Canada, Curling Canada. Curling

¹⁹ Chappelet and Kübler-Mabbott (n 1) 91.

²⁰ For instance, it is not a given that athletes who play in the National Hockey League will play in the Olympic Games. An agreement to play in the Sochi 2014 Olympics was reached only in July 2013. 'Deal Reached to Send NHL Players to 2014 Olympics' *TheGlobeandMail* (Toronto, 19 July 2013) <<http://www.theglobeandmail.com/sports/hockey/nhl-reaches-deal-to-send-players-to-2014-olympics/article13319940/>> accessed 15 July 2015. This is in contrast to football, where a club that has a player who is called upon to play for the national team is obliged to allow the player to participate.

²¹ Agenda 2020 (n 13) 29.

²² World Curling Federation, 'Constitution of the World Curling Federation' (2014) ¶ 2.

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Canada has a similar mandate to the World Curling Federation, but at the level of Canada.²³ If there is an Olympic Games to be organized in Canada, an OCOG will be created to execute the Games. The OCOG for the 2010 Vancouver Winter Olympic Games was the “Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games”, known by its acronym, VANOC. VANOC was a federally incorporated non-profit corporation, established on 30 September 2003, and formally dissolved on 27 June 2014.²⁴

Although the IOC is the head of the Olympic Movement, it does not run the Olympic Movement in a top-down manner. Instead, the Olympic Movement is a decentralized system. In this way, it resembles other international bodies developed prior to the Second World War—where international actors were broader ‘social movements’ instead of centrally-coordinated functionalist institutions.²⁵ In this sense, it is perhaps more accurate to view the IOC as a coordinating body, with powers of funding and recognition that grant it authority over other members. However, these powers are far from absolute, and while some IFs or NOCs are beholden to the IOC, some powerful IFs, such as FIFA, or NOCs, such as the United States Olympic Committee, maintain a large degree of independence.

Chappelet and Kübler-Mabbott recognised that other actors are often closely entwined with the Olympic Movement as part of an ‘extended Olympic system’.²⁶ State governments regulate and fund sport. International organisations, and their agents, such as the United Nations Educational, Scientific and Cultural Organization (‘UNESCO’), have played a key role in assisting the IOC in the regulation of sport. As mentioned in Chapter Two, the European Commission is also working with the Olympic Movement to improve governance. A second group of actors are sponsors, often private companies, who contribute funding to sport. Third, media organisations broadcast sporting events, and fund sport through broadcasting rights payments.

²³ Canadian Curling Association, ‘Constitution and By-Laws of the Canadian Curling Association/L’ Association Canadienne de Curling’ (2010), art. 2.

²⁴ Ernst & Young, ‘Consolidated Financial Statements: Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games’ (2014).

²⁵ See Dan Bousfield and Jean Michel Montison, ‘Transforming an International Organization: Norm Confusion and the International Olympic Committee’ (2012) 15 *Sport in Society: Cultures, Commerce, Media, Politics* 823, 826.

²⁶ Chappelet and Kübler-Mabbott (n 1) 9–10.

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Finally, two particular actors can be differentiated from others within the Olympic Movement: WADA and the CAS.²⁷ These two actors regulate the Olympic Movement. The WADA is a specialized body that coordinates anti-doping initiatives in sport. Amongst other activities, the WADA conducts research, engages in anti-doping education, sets standards through the World Anti-Doping Code, and accredits anti-doping laboratories.²⁸ The WADA primarily regulates the conduct of athletes, but its standards also guide the actions of the IFs, and professional leagues. Notably, the WADA is funded and governed both by Olympic Movement actors, as well as by country governments. The CAS regulates the Olympic Movement through dispute resolution. Organisations and athletes can refer disputes to the CAS by agreement.²⁹ Disputes submitted to the CAS include athlete discipline (including doping violations), eligibility for athletes to participate in competitions, and recognition of national sporting bodies. Currently, CAS awards can be appealed to the Swiss Federal Tribunal. Domestic courts generally respect CAS awards as valid arbitral awards. However, two cases from Germany in 2014 and 2015 have created some doubt as to the role of domestic law in CAS awards, and will be discussed briefly in section 3.4, below.

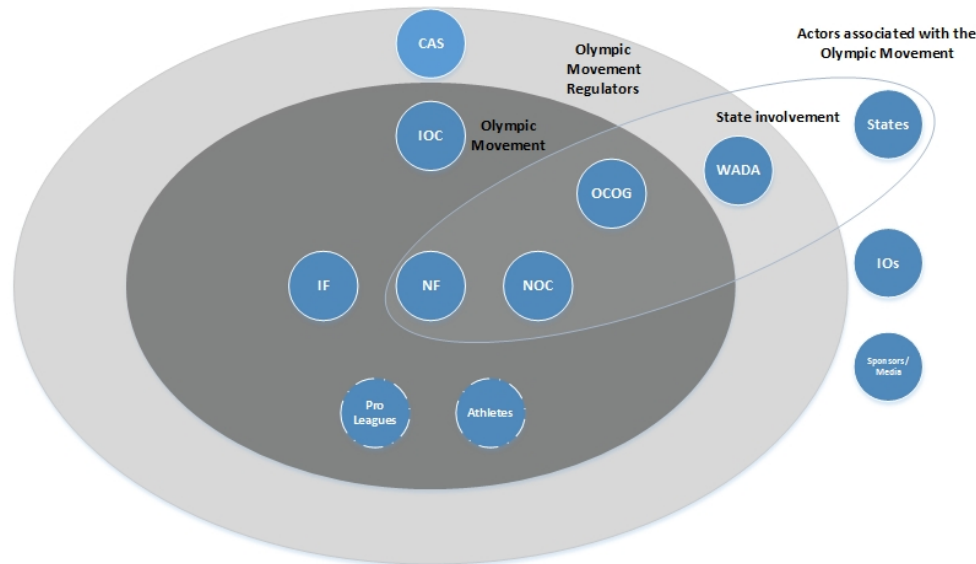
A visual representation of the Olympic Movement is shown in the Venn diagram below. This representation attempts to show the interaction of the actors mentioned above. In the centre is the Olympic Movement itself, with the professional leagues and athletes set-off somewhat, as they are not fully integrated. Outside of the Olympic Movement are the ‘regulators’, WADA and the CAS. Outside of this lie the states, IOs and sponsors/media, who work with the Olympic Movement, but are not part of the Movement. Finally there is an area of high state interaction. Although the Olympic Movement is largely independent from states, states provide funding, and exert some formal control, in WADA, the OCOGs, and some NOCs and NFs.

²⁷ *ibid* 16–18.

²⁸ World Anti-Doping Agency, ‘Constitutive Instrument of Foundation of the Agence Mondaile Antidopage/World Anti-Doping Agency’ (2014), art. 4.

²⁹ Court of Arbitration for Sport, ‘Statutes of the Bodies Working for the Settlement of Sports-Related Disputes’ (2013) S1 (CAS Statutes).

Fig. 3 – The ‘Olympic System’



3. The IOC

In examining the IOC, this Part will focus on four aspects: (1) the structure and composition of the IOC, (2) the geographic scope of the IOC's activities, (3) the core documents used by the IOC regarding the Olympic Games, and (4) the legal status of the IOC.

3.1. The Structure/Composition of the IOC

Compared to other international actors, the IOC is relatively ancient. On June 23, 1894, the IOC was founded in Paris by Baron Pierre de Coubertain, and a collection of like-minded men, many of noble background.³⁰ Initially known as the Comité International des Jeux Olympiques, it was established as a transnational social movement during an era where

³⁰ David Miller, *The Official History of the Olympic Games and the IOC: Athens to London 1894–2012* (Mainstream Publishing 2012) 31–33.

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nationalism was ascendant.³¹ The IOC was imbued with the norms of universality, individualism, voluntarism, and rationalism—ideas that were seminal to social thought at the end of the nineteenth century.³² Based in Lausanne, Switzerland, the IOC is composed of three primary organs: the Session, the Executive Committee, and the various IOC Commissions.

3.1.1. IOC Session

The Session is the primary representative and policy-making body of the IOC. The duties of the Session are, *inter alia*, to amend the Olympic Charter, elect members of the IOC, elect the IOC's Executive Board, approve the annual report and accounts of the IOC, recognize NOCs and IFs, and, importantly for this thesis, to select the host city of the Olympic Games.³³

The IOC Session is composed of a maximum of 115 members. After the conclusion of the Sochi Winter Olympic Games in February 2014, the IOC Session had 107 members. The members represent different constituencies, and are divided into four categories:

- a) general members (up to 70, must be the majority of members);
- b) active athletes (up to 15);
- c) presidents, executives, etc. of IFs, or other associations recognised by the IOC (up to 15);
- d) presidents, executives, etc. of NOCs or continental associations of NOCs (up to 15).³⁴

To become a member of the IOC Session, one is, co-opted by the IOC—nominated and elected by the IOC members.³⁵ Potential members may be nominated by IOC members, IFs, and NOCs, and other organisations recognised by the IOC. The candidatures are reviewed by the IOC's Nominations Commission, which is comprised of IOC members, and then are sent to the IOC's Executive Board for approval. The Executive Board then submits the candidatures to the IOC Session, which then votes to elect the

³¹ Bousfield and Montison (n 25) 824.

³² *ibid* 825.

³³ Olympic Charter (n 2) Rule 18.2.

³⁴ *ibid* Rule 16.1.1.

³⁵ *ibid* Rule 18.2.2; Bye-Law to Rule 16, 2.5.1.

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candidates by majority vote in a secret ballot.³⁶ Following Agenda 2020, IOC members will be sought out with more attention paid to: geographic balance, gender balance, and the IOC's needs in terms of skills and knowledge (e.g., medical experience, sociological experience, business expertise, sports management expertise).³⁷

Once elected by the Session, members serve for renewable eight-year terms.³⁸ These terms can end earlier if: (1) the IOC member reaches seventy years of age (with minor exceptions), (2) moves their domicile or main centre of interests from the country in which they serve, (3) in the case of members who are appointed on the basis of being an athlete or an executive, they cease their executive function (e.g., they are no longer an executive of the IF or NOC they represent, or retire as an active athlete), or (4) are expelled by the IOC.³⁹ The co-option and self-selection of members of the IOC has led to claims that membership is biased towards those who are wealthy and well-connected, and that the IOC is a “self-perpetuating oligarchy immune from democratic accountability.”⁴⁰

Fig. 4 – IOC Membership⁴¹

| | Individual Members | Active Athletes | Presidents of IFs, etc. | Presidents of NOCs, etc. |
|------------------------------------|-------------------------------|-------------------------------|---|-------------------------------------|
| Distribution of Members | 70 | 15 | 15 (balanced proportions of summer and winter sports) | 15 |
| Nationality | No more than 1 per country | No more than 1 per country | No nationality restrictions among IF presidents | No more than 1 per country |

³⁶ *ibid* Bye-Law to Rule 16, 2.6.

³⁷ Agenda 2020 (n 13) 98.

³⁸ *ibid* Rule 16.1.7.

³⁹ *ibid* Rule 16.3.

⁴⁰ John R. Short, ‘Globalization, Cities and the Summer Olympics’ (2008) 13 *City* 321, 325.

⁴¹ Slightly adapted from Agenda 2020 (n 13) 98.

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| | | | |
|-----------------------|---|---|---|
| Term of Office | Term of office of eight years, renewable every eight years; general age limit of 70, with some exceptions | For athletes, the term will be the same as that provided for the Athletes' Commission | For members elected as presidents of IFs, NOCs or continental associations, their term as IOC members is linked to the function on the basis of which they were elected; if they lose that function they also cease to be IOC members |
|-----------------------|---|---|---|

The IOC Session is not a one-country, one-representative body. First, members of the IOC do not represent their country or organisation in the IOC, but instead represent the IOC in their own country or organisation.⁴² Second, although 206 territories have NOCs recognised by the IOC, there may only be 115 IOC members. This situation differs from, say, FIFA, where each national football association has one vote in the FIFA Congress.⁴³ The 101 IOC members as of 1 July 2015 came from only 71 different countries. Of these 71 countries, eighteen produced multiple IOC members, with seven countries producing three or more IOC members.⁴⁴ Although 'general members' are limited to one per country,⁴⁵ this limit does not prevent members from the other groups hailing from the same country (e.g., Canada has an individual IOC member—Richard Pound, and an 'active athlete' member—Hayley Wickenheiser), and 'presidents of NOCs' are limited to one per country, various grandfather rules, exceptions, and the members who are athletes and executives lead to this imbalance. Given that only 71 countries have produced IOC members, but there are 206 countries that have recognised NOCs, the IOC is certainly not a globally-representative body.

In addition to the general Session members, there are special IOC members. As of 1 July 2015, there are 33 honorary members, one honorary president, and one honour

⁴² *ibid* Rule 16.1.4.

⁴³ Fédération Internationale de Football Association, 'FIFA Statutes' (2015) Article 23.1.

⁴⁴ As of 1 July 2015, countries that produced more than one IOC member were: Austria, Canada, Cuba, Denmark, France, Germany, New Zealand, Norway, South Korea, Sweden, and Ukraine (two members each); China, Italy, and Spain (three members each); Great Britain, Russia, and the USA (four members each); and Switzerland (five members).

⁴⁵ Olympic Charter (n 2), Rule 16.1.1.1.

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member.⁴⁶ Honorary members are former IOC members who have “rendered exceptional services”, and have retired after serving ten years as an IOC member. Such members include, for example King Willem-Alexander of the Netherlands, an IOC member from 1998–2013, who resigned from the Session after becoming King in 2013; or Phil Coates of Australia, a three-time Olympian, and an IOC Member from 1982–2011, retiring from the Session at the age of seventy. The sole honorary president is Jacques Rogge, also a three-time Olympian, and President of the IOC from 2001–2013. Honour members are those who have not been IOC members, but have “rendered particularly outstanding services to it.” The sole honour member as of 2014 is former U.S. Secretary of State Henry Kissinger, who was a member of the IOC 2000 Commission, and has been an honour member since 2002. All of these members enjoy life-time appointments, but have no voting rights within the IOC.

3.1.2. IOC Executive Board

The day-to-day affairs of the IOC are overseen by the IOC’s Executive Board. The duties of the Executive Board are, *inter alia*, to “monitor[] the observance of the Olympic Charter”, to prepare the annual report and accounts, to submit to the Session proposals for changes of laws or for those whom it recommends for election to the IOC, to take legally-binding decisions for the IOC, and to meet with the IFs.⁴⁷ Importantly for this thesis, the Executive Board also “establishes and supervises the procedure for accepting and selecting candidatures to organise the Olympic Games.”⁴⁸

The Board is comprised of fifteen IOC members: the IOC President, four vice-presidents, and ten other members—all of whom are also members of the Session. The Board members are elected by the Session.⁴⁹ All members, save the President, may serve a maximum of two successive terms of four years, with re-election possible after a two-year waiting period. The President of the IOC is elected by the Session for an initial eight-year term, and may be re-elected for a second term of four years. The Presidency of the IOC is, in theory a weak presidency, whose decisions must be ratified by the IOC’s Executive

⁴⁶ *ibid* Rule 16.4.

⁴⁷ *ibid* Rule 19.3.

⁴⁸ *ibid* Rule 19.3.6.

⁴⁹ *ibid* Rule 19.2.1.

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Board. But, the President of the IOC appoints members to the various working groups and most of the IOC Commissions.⁵⁰

3.1.3. IOC Commissions and Administration

Assisting both the Executive Board and the IOC Session are numerous IOC Commissions, comprised largely of IOC members. These Commissions include, amongst others: Athletes, Nominations (of IOC members), Olympic Solidarity, Women and Sport, TV Rights and New Media, Sport and Law, and Medical. Three particular commissions are important for this thesis: the Evaluation Commission for Candidate Cities, the Ethics Commission, and the Coordination Commissions for the various Olympic and Youth Olympic Games. These commissions will be discussed later on in this thesis, particularly in Chapters Six and Seven.

The IOC also has a full-time administration. The administration had 355 employees at the end of 2012.⁵¹ The administration is divided in various departments: Olympic Games, International Cooperation and Development, Finance and Administration, Sports, Relations with the NOCs, Technology and Information, Communications, Television and Marketing Services, Legal Affairs, Medical and Scientific, Olympic Museum and Olympic Solidarity.⁵²

3.2. The IOC, Geography, and NOCs

As discussed above, the IOC Session is not a one-country, one-member organisation, unlike, say the United Nations General Assembly. Instead, countries are linked to the IOC through NOCs. As of December 2014, the IOC has recognised 206 NOCs. In addition to being more than the number of IOC Session members, the number is also greater than the 193 Member States of the United Nations ('UN'). What causes this difference in number? It comes down to a distinction between 'state' and 'country', and the definition of the latter.

⁵⁰ *ibid* Rule 21.

⁵¹ International Olympic Committee, 'Building a Legacy Through Sport: IOC Final Report 2009-2012' (2013) 42.

⁵² International Olympic Committee, 'The Organisation' (*Olympic.org*) <<http://www.olympic.org/about-ioc-institution?tab=administration>> accessed 08 June 2015.

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Only states may be members of the UN General Assembly.⁵³ For an entity to be admitted to the UN, it must be recognized as a state by the international community, and be recommended by the UN Security Council, the executive body of the UN.⁵⁴ Therefore, entities whose status is disputed by the international community, particularly by Security Council members that possess a veto,⁵⁵ are not members of the United Nations. Particular examples include Palestine, Taiwan, and Kosovo.

Returning to the IOC, NOCs are often organised on the basis of sovereign states. However, as implied by the term ‘national’, state-based organisation is not always the case. Prior to 1975, when describing the jurisdiction of NOCs, the IOC Charter included “country or geographical area”.⁵⁶ Thus, entities that were not states could have an NOC recognised by the IOC. The terminology was changed to “country, state or territory” in 1976,⁵⁷ and then to “country” by 1978.⁵⁸ Only in the 1996 Olympic Charter was the term “country” defined as “an independent state recognized by the international community.”⁵⁹ Thus, after 1996, only entities recognised as states could have an NOC recognised by the IOC, although prior entities with an NOC were grandfathered. Other sporting federations have followed a similar tack as the IOC, using ‘nation’ or ‘territory’ instead of ‘state’, and tightening their definitions when conflict arose as various territories sought recognition from sporting bodies. This was particularly evident in the case of Gibraltar and its quest for recognition by the Union of European Football Federations (‘UEFA’).⁶⁰ As of December 2014, thirteen territories have a NOC recognised by the IOC, but are not members of the UN: American Samoa, Aruba, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Guam, Hong Kong, Kosovo, the Palestinian Authority (designated

⁵³ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 4, para. 1.

⁵⁴ *ibid* art. 4, para. 2.

⁵⁵ China, France, Russia, the United Kingdom, and the United States possess vetoes over UN Security Council actions.

⁵⁶ International Olympic Committee, Olympic Charter (1975) Rules 8, 24.

⁵⁷ International Olympic Committee, Olympic Charter (1976) Rules 8, 24.

⁵⁸ International Olympic Committee, Olympic Charter (1978) Rule 24.

⁵⁹ International Olympic Committee, Olympic Charter (1996) Rule 34.1.

⁶⁰ UEFA had initially accepted football associations who were responsible for organising football in the territory. Gibraltar applied to become a UEFA member under these rules. In the midst of Gibraltar’s application, UEFA restricted new members to those who are Member States of the United Nations. The CAS required UEFA to consider Gibraltar’s membership under its prior rules, under which Gibraltar applied, and Gibraltar was eventually accepted as a member of UEFA in May 2013. *The Gibraltar Football Association (GFA)/Union des Associations Européennes de Football (UEFA)* (7 October 2003) Arbitration CAS 2002/O/410.

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‘Palestine’), Puerto Rico, Taiwan (designated ‘Chinese Taipei’), and the United States Virgin Islands (designated ‘Virgin Islands’). The reverse situation, where an entity is a UN member, but not have a recognised NOC, is rare. South Sudan held this position for four years, admitted to the UN in July 2011, and having its NOC recognised by the IOC in August 2015.⁶¹ During this interim period, South Sudan’s sole athlete at the 2012 Summer Olympic Games, Guor Marial, competed under the Olympic flag as an ‘independent’ athlete, as opposed to as a South Sudanese athlete.⁶²

The South Sudan example also stands out because recognition of an NOC by the IOC has often been used by territories as evidence of its independence, and thus on the path to statehood.⁶³ The approach of seeking NOC recognition alongside UN membership was used throughout de-colonization in the 1960s, and following the collapse of the Soviet Union and Yugoslavia in the 1990s.⁶⁴ This approach has been used more recently by the territory of Kosovo. Kosovo established a NOC in 1992, but had a disputed status as a state. Kosovo declared independence in February 2008, and as of December 2014 was recognised by 108 UN member states. In December 2014, Kosovo’s NOC was recognised by the IOC, meaning that Kosovar athletes can participate in the Olympic Games under a Kosovo flag. Serbia, the state that would otherwise claim Kosovo’s territory, condemned the IOC’s decision as ‘politically-motivated’, and a violation of IOC practice that recognized NOCs should belong to UN member states.⁶⁵ Of course, UN membership is not the requirement in the Olympic Charter, which requires a NOC to develop the Olympic Movement in their respective country, which as discussed above, is “an independent State recognised by the international community.”⁶⁶ To maintain consistency, I will use the term ‘countries’ when describing particular entities related to the Olympic Games (e.g., ‘host country’). However,

⁶¹ International Olympic Committee, ‘South Sudan NOC Granted Full Recognition at 128th IOC Session’ (2 August 2015) <www.olympic.org/news/south-sudan-noc-granted-full-recognition-at-128th-ioc-session/246907> accessed 17 August 2015.

⁶² Gerald Imray, ‘London 2012: Guor Marial to Run Marathon under Olympic Flag, Literally’ *Toronto Star* (Toronto, 10 August 2012) <<http://www.cansport.com/rss/index.php?aid=115061>> accessed 25 March 2015. Three other athletes from the Netherlands Antilles, which dissolved in 2010 and thus lost its NOC, competed under the Olympic flag in 2012.

⁶³ Scarlett Cornelissen, ‘The Geopolitics of Global Aspiration: Sport Mega-Events and Emerging Powers’ (2010) 27 *The International Journal of the History of Sport* 3007, 3011.

⁶⁴ *ibid.*

⁶⁵ ‘Serbia’s National Olympic Committee Condemns Kosovo’s Olympic Recognition’ (*Tass: Russian News Agency*, 11 December 2014) <itar-tass.com/en/sports/766533> accessed 25 March 2015.

⁶⁶ Olympic Charter (n 2) Rules 28, 30.

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when I discuss theoretical concepts, as I have already done, I shall use the term ‘state’ (e.g., ‘state responsibility’).

3.3. Core Documents of the IOC Relating to the Olympic Games

In order to govern itself and its relationship with the broader Olympic Movement, the IOC relies on three core documents, which will be referred to throughout this thesis. First and foremost is the Olympic Charter. The Olympic Charter is a private agreement that governs the IOC and the Olympic Games. The Charter was first published in 1908, codifying various rules that had been in place until then.⁶⁷ The Charter is not a static document, but is amended on an almost annual basis. Some of these amendments are minor, tinkering with a rule or two, but some years see a significant overhaul of the Charter. Some authors have identified the Olympic Charter as customary international law.⁶⁸ However, these claims overstate the importance of the Charter. Leaving aside all of the definitional and ontological problems with declaring anything customary international law,⁶⁹ stretching rules covering the governance of sport to reflect some sort of global practice beyond sport strains credulity. Given that the Charter can be amended at the will of the IOC Session,⁷⁰ it does not have the gravitas that customary international law should possess. Perhaps more accurately, the Olympic Charter may be said to have a status approaching that of an international treaty.⁷¹ However, this again perhaps makes the Charter into something that it is not, and as stated in Chapter Two, the focus of the study of the IOC should be broader than the Charter.

A second set of core documents are the questionnaires that cities interested in hosting the Olympic Games are required to answer. These are formally known as the Candidature Acceptance Procedure and the Candidature Procedure and Questionnaire. The

⁶⁷ International Olympic Committee, ‘Annuaire’ (1908).

⁶⁸ Paul Mastrocola, ‘The Lords of the Rings: The Role of Olympic Site Selection as a Weapon Against Human Rights Abuses: China’s Bid for the 2000 Olympics’ (1995) 15 Boston College Third World Law Journal 141, 147; David J. Ettinger, ‘The Legal Status of the international Olympic Committee’ (1992) 18 Pace Yearbook of International Law 97, 104 (citing James A.R. Nafziger, *International Sports Law* (1st edn, Transnational Publishers 1988) 34).

⁶⁹ See Jan Klabbbers, *International Law* (Cambridge University Press 2013) 26–29.

⁷⁰ Olympic Charter (n 2) Rule 18.2.1.

⁷¹ Mark James and Guy Osborn, ‘London 2012 and the Impact of the UK’s Olympic and Paralympic Legislation: Protecting Commerce or Preserving Culture?’ (2011) 74 The Modern Law Review 410, 414.

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host city selection process is discussed in detail later in Chapter Five. The important thing to know for now is that these questionnaires, and the written responses made to these questions by the bidding cities, are the core of the host selection process. The questionnaires are publicly-accessible, and the bids submitted by the host cities are as well. Concerns regarding accessibility remain, however, and will be addressed in Chapter Five.

The third document that is central to the IOC is the Host City Contract between the IOC and the hosts of the various Olympic Games. The earliest Host City Contract that this researcher was able to find related to the 1980 Olympic Games. On October 23, 1974, in Vienna, Austria, the Host City Contracts were signed by the IOC, the United States Olympic Committee, and the Lake Placid bid committee for the 1980 Winter Olympic Games; and between the IOC, the Soviet Union's Olympic Committee, and the Moscow bid committee for the 1980 Summer Olympic Games. These contracts are only one page long, with six articles.⁷² By 2014, the draft Host City Contract for the 2022 Winter Olympic Games spanned to eighty-four pages and eighty-seven articles.⁷³ The Host City Contracts were kept confidential, although would be leaked from time-to-time. However, as part of the IOC's Agenda 2020 reforms, future Host City Contracts will likely be made public as of the 2022 Winter Olympic Games host selection.⁷⁴ While the IOC uses other documents to govern the Olympic Games, these three are the central documents.

3.4. Legal Status of the IOC

The Olympic Charter states that the IOC is an “international non-governmental not-for-profit organisation of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council...”.⁷⁵ The IOC is not an

⁷² Contract Between the International Olympic Committee and the National Olympic Committee of the Elected City (Lake Placid – USA) (23 October 1974); Contract Between the International Olympic Committee and the National Olympic Committee of the Elected City (Moscow – USSR) (23 October 1974). These contracts were viewed at the IOC's Olympic Studies Centre. There is an embargo of 20–30 years on many documents, including the host city contracts, but not including bids to host the Games. International Olympic Committee, ‘Historical Archives Access Rules’ (2011) <http://www.olympic.org/Assets/OSC%20Section/pdf/Info%20P_3E.pdf> accessed 1 July 2015.

⁷³ International Olympic Committee, Draft Host City Contract: Olympic Winter Games in 2022 (2014) (Host City Contract).

⁷⁴ Agenda 2020 (n 13) 15.

⁷⁵ Olympic Charter (n 2) Rule 15.1.

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international organisation, which requires establishment by a treaty or other international legal instrument, possession of international legal personality, and states members.⁷⁶ First, the Olympic Charter is a private agreement under Swiss law, not an international legal instrument. Second, the IOC does not have international legal personality. Third, discussed above, the IOC does not have states members. Thus, the IOC can be classified as an NGO, defined as “any organization which is not established by inter-governmental agreement.”⁷⁷ While some classify the IOC as an international non-governmental organisation (‘INGO’),⁷⁸ the difference between an NGO and an INGO is merely one of scope of activities, and this thesis will simply use the term NGO.

As an NGO, the IOC is not immune from legal proceedings. Swiss law has made clear that since the IOC is an association, and not an “Intergovernmental Organization”, the IOC is not eligible for various privileges and immunities such as inviolability of the person and premises, or immunity from legal proceedings and the enforcement of judgements that Intergovernmental Organisations enjoy.⁷⁹ Thus, the IOC is *de jure* amenable to suit in a sovereign court.

However, the IOC may possess a significant degree of *de facto* immunity. Ken Foster in particular has pointed out that international sporting organisations “claim an immunity from legal proceedings that is almost unique amongst international NGOs.”⁸⁰ But what might this immunity look like? This answer can be examined by looking at the CAS, and at case law in domestic and EU courts.

The CAS was created in 1983, and began its work in 1984. The purpose behind establishing the CAS was to keep cases involving sport out of domestic courts.⁸¹ This would ensure that the Olympic Movement retain its independence. In addition, it would

⁷⁶ International Law Commission, *Draft Articles on the Responsibility of International Organizations* (United Nations 2011), art. 2(a).

⁷⁷ United Nations Economic and Social Council, E/Res/1968/1296, art. 7.

⁷⁸ See, e.g., Aaron Beacom, ‘Sport in International Relations: A Case for Cross-Disciplinary Investigation’ (2000) 20 *The Sports Historian* 1, 6; Trevor Taylor, ‘Sport and World Politics: Functionalism and the State System’ (1988) 43 *International Journal* 531, 533.

⁷⁹ Bundesgesetz über die von der Schweiz als Gaststaat gewährten Vorrechte, Immunitäten und Erleichterungen sowie finanziellen Beiträge [Gaststaatgesetz, GSG], Loi fédérale sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordées par la Suisse en tant qu’Etat hôte [Loi sur l’Etat hôte, LEH] [Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies Granted by Switzerland as a Host State] [Host State Act] June 22 2007, AS 2007, RO 2007 (2007), art. 3, ¶ 1, art. 24 ¶ 4 (Switz.).

⁸⁰ Ken Foster, ‘Is There a Global Sports Law?’ (2003) 2 *Entertainment Law* 1, 1.

⁸¹ Chappelet and Kübler-Mabbott (n 1) at 130.

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also ensure that rules set by the Olympic Movement would apply in lieu of domestic law, which would ensure a uniformity of rules across international sport. Conflicts involving members of the Olympic Movement are generally submitted to the CAS. As the CAS is an arbitral body, disputes are submitted to the CAS via a contractual arrangement, whether directly through a negotiated contract, or through the governing documents of a sporting body.⁸² Awards by the CAS are covered by the New York Arbitration Convention, which requires states to recognise and enforce foreign and international arbitration awards.⁸³ One U.S. Federal District Court held that a CAS award would not be overturned unless it violated the “most basic notions of morality and justice.”⁸⁴ In that case, the court also noted that although a CAS decision may be “arbitrary and capricious” the conduct does not rise to the required level to compel a U.S. court to overturn a CAS decision.⁸⁵

Although CAS was created in part to ensure the independence of the Olympic Movement, the CAS has itself faced criticisms about its independence from the sporting organisations that it is tasked with regulating. In 1993, the Swiss Federal Tribunal, which is empowered to review CAS awards, questioned the independence of CAS from the IOC, as CAS received much of its funding from the IOC.⁸⁶ Following several reforms, the Swiss Federal Tribunal found that CAS was sufficiently independent from the IOC in 2003.⁸⁷ However, in late 2014 and early 2015, two German court cases have again questioned the independence and role of the CAS. In *Pechstein*, a Munich court has held that the arbitration clause requiring athletes to turn to the CAS for dispute resolution is contrary to German and perhaps EU law as it is potentially an abuse of a monopolistic position by the sporting organisations. As such, the ‘public policy’ exception in the New York Convention applies. The court also found that the method of selecting arbitrators at the time of the case

⁸² CAS Statutes, R38. For an example of a contract that refers disputes to the CAS, see Host City Contract (n 73) art. 87. For an example of sporting organisation statutes that refer disputes to CAS, see the Olympic Charter (n 2) Rule 61.

⁸³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 07 June 1959) 330 UNTS 3.

⁸⁴ *Gaitlin v U.S. Anti-Doping Agency, Inc.*, F. Supp 2d, 2008 WL 2567657, at *1.

⁸⁵ *ibid.*

⁸⁶ Decision 4P.217/1992 (15 March 1993) (Gundel v FEI), ATF 119II271.

⁸⁷ Decision 4P.267-270/2002 (27 May 2003) (Lazutina c. CIO) ATF 129III445.

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was similarly unfair to athletes.⁸⁸ A second German court in the case of *Wilhelmshaven* has held that the CAS must take account of general EU law, such as the freedom of movement, and that sports clubs should not be confined to the internal dispute resolution system.⁸⁹ Both of these cases are under appeal as of this writing, and may be overturned. Regardless of the outcome, however, the CAS is likely to continue to keep the IOC and other Olympic Movement members out of domestic courts on many matters.

The CAS does not hear every case involving members of the Olympic Movement. A number of cases end up in domestic courts.⁹⁰ For instance, the Court of Justice of the European Union ('ECJ') has adjudicated a number of cases involving members of the Olympic Movement. The ECJ has exercised its jurisdiction over UEFA in striking down various rules related to player transfers in Europe in the infamous *Bosman* case.⁹¹ The *Meca-Medina* case made clear that the ECJ will also intervene in matters that are 'purely sporting' in nature (which has been so far undefined, except for perhaps nationality requirements for national teams),⁹² as these matters may have economic consequences under EU law.⁹³ Members of the Olympic Movement have also used the ECJ as a forum for redress. FIFA joined together with UEFA in a complaint against the European

⁸⁸ Peschstein U 1110/14 (15.01.2015) OLG München. Prior to 2014, arbitrators who could serve on a CAS panel were selected from a 'closed list' of particular arbitrators. Sixty percent of these arbitrators were nominated by the IOC, IFs, and NOCs. The remaining forty percent were selected by the International Council of Arbitration for Sport, half of which were selected after consultations with athletes, and half of which were selected as 'independent' members. Of the twenty members of the International Council of Arbitration for Sport, twelve were appointed by the IOC, NFs, and IFs, with the remainder being selected by these twelve members. As of 2014, the CAS is able to appoint whomever it deems appropriate to serve as an arbitrator. See Anotine Duval and Ben van Rompuy, 'The Compatibility of Forced CAS Arbitration with EU Competition Law: Pechstein Revisited' (2015) <<http://ssrn.com/abstract=2621983>> accessed 15 July 2015.

⁸⁹ *SV Wilhelmshaven e.V.* 2 U 67/14 = 12 O 129/13 (30 Dez. 2014) OLG Bremen.

⁹⁰ The United States Olympic Committee ('USOC') is active in US courts in protecting Olympic trademarks. *E.g.*, Craig W. Colbrook, 'Gold Meddling: How the U.S. Olympic Committee Overprotects the Olympics Brand' (2008) 5 DePaul Journal of Sports Law and Contemporary Problems 57. VANOC is an example of an OCOG being sued in a state court *Sagen v Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, 2009 BCSC 942 (aff'd 2009 BCCA 522). FIFA is an example of an IF that is active in sovereign courts, such as the European Court of Justice, *UEFA and FIFA v Commission* (Case C-201/11 P, C-204/11 P, and C-205/11 P) ECJ July 18, 2013.

⁹¹ Case C-415/93 *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* [1995] ECR I-4921.

⁹² See Stephen Weatherill, 'On Overlapping Legal Orders: What is the 'Purely Sporting' Rule?' in Barbara Bogusz, Adam Cygan and Erika Szyszczak (eds), *The Regulation of Sport in the European Union* (Edward Elgar 2007) 50–51.

⁹³ Case C-519/04 P *David Meca-Medina and Igor Majcen v Commission of the European Communities* [2006] ECR I-6991, para 27.

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Commission over television broadcasts of the FIFA World Cup and the UEFA Euro Championships.⁹⁴

Turning to the Olympic Games themselves, courts appear to have taken a ‘hands-off’ approach, seen over three cases in the U.S.A. and Canada. The first case involved the 1980 Lake Placid Winter Olympic Games, and the participation of Taiwan. Prior to 1980, the People’s Republic of China did not participate in the Olympic Games, while Taiwan participated as the Republic of China. In 1979, the IOC had determined that both the Republic of China (Taiwan) and the People’s Republic of China would compete in the Olympics as of 1980.⁹⁵ As part of this agreement, the People’s Republic of China was allowed to use the People’s Republic of China as its official NOC name, its state flag and anthem, while Taiwan was required to submit a new NOC name, flag, and anthem to the IOC Executive Board.⁹⁶ An athlete selected to participate on the Taiwan Olympic team sought an injunction against the Lake Placid organizing committee to halt the 1980 Winter Games, unless Taiwan was allowed to compete under the name and flag of the Republic of China. The New York courts dismissed the claim as a “political question”.⁹⁷ Notably, the U.S. Justice Department expressed concern that “judicial intervention in the IOC’s management of the games is inconsistent with the United States’ commitment to observe the rules established by the IOC and calls into question the ability of the United States to host other international sporting events.”⁹⁸

A second case made its way through American courts prior to the 1984 Los Angeles Summer Olympic Games. In *Martin v IOC*, female runners filed a complaint alleging gender-based discrimination by the IOC. The 1984 Games programme included 5,000m and 10,000m running events for men, but not for women.⁹⁹ The Ninth Circuit upheld the decision by the district court judge that neither California law, nor the U.S.

⁹⁴ Case C-201/11 P, C-204/11 P, and C-205/11 P *UEFA and FIFA v Commission*.

⁹⁵ International Olympic Committee, *Olympic Review* (1979) 562.

⁹⁶ Gerald Chan, ‘The “Two-Chinas” Problem and the Olympic Formula’ (1985) 58 Public Affairs 473, 481.

⁹⁷ *Ren-Guey v Olympic Games* 72 A.D.2d 439, 424 N.Y.S. 2d 535 (App. Div. 1980), *aff’d*, *Ren-Guey v Lake Placid 1980 Olympic Games, Inc.* 49 N.Y. 2d 771, 403 N.E.2d 178, 426 N.Y.S.2d 473 (App. Ct. 1980).

⁹⁸ Statement of Interest of the United States in *Liang Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, 49 N.Y. 2d 771 (App. Ct. 1980) 72 A.D.2d 439, 424 N.Y.S.2d 535, *aff’d* 49 N.Y.2d 771, 403 N.E.2d 178, 426 N.Y.S.2d 473 (1980) 3.

⁹⁹ *Martin v International Olympic Committee*, 740 F.2d 670 (9th Cir. 1984).

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Constitution supported a claim for the female runners to compel the IOC to add the events. While not central to the majority's decision, the Ninth Circuit found:

...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 entire world under the terms of that agreement.¹⁰⁰

Finally, in Canada, a similar case to *Martin* was brought before the British Columbia courts in *Sagen v VANOC*.¹⁰¹ Like prior editions of the Winter Olympic Games, the 2010 Vancouver Winter Olympics programme featured ski jumping for men, but not for women. Several female ski jumpers brought a claim of discrimination under the Canadian Charter of Rights and Freedoms. Although *Martin* featured the IOC, the International Association of Athletics Federations (the IF in question), the United States Olympic Committee ('USOC', the NOC in question), the OCOG, and others as named defendants, *Sagen* named the OCOG, VANOC, as the sole defendant. The decision to leave out the IOC and IF was likely a practical one by the complainants, as any complaint against the IOC or IF would likely have been referred to the CAS. If that happened, the ski jumpers probably could not have invoked Canadian human rights law as they could in the British Columbian courts. However, VANOC did not control the contents of the Olympic programme. As such the courts found that the discrimination faced by the female ski jumpers was "the result of the actions of a non-party [the IOC] which is neither subject to the jurisdiction of this Court nor governed by the [Canadian Charter of Rights and Freedoms]."¹⁰² Thus, while the *Martin* court preached caution in exercising jurisdiction over the IOC, the *Sagen* court hinted that the IOC would not have been subject to Canadian law at all.

Turning to the IOC, could the IOC be sued in a domestic court for the organisation of the Games? Canadian and United States courts appear hesitant to exercise their

¹⁰⁰ *ibid* 677.

¹⁰¹ *Sagen v Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, 2009 BCSC 942, *aff'd*, 2009 BCCA 522.

¹⁰² *Sagen v Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, 2009 BCSC 942, para. 132.

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jurisdiction over the IOC itself on matters related to the Olympic Games. However, the German court in *SV Wilhelmshaven*, under appeal as of this writing, has indicated that sporting organisations must take into account at least some general law. Additionally, the cautions sounded in the Canadian and American cases were on issues that related to the operation of a sport. But, the worst outcomes of the Olympic Games are not a ‘sporting’ matter, necessitating such a ‘hands off’ approach. However, even if the IOC could be held to account in front of a domestic court, the question of causation is tricky, since, as seen next, the question of who really organises the Olympic Games renders legal accountability a complex question.

4. Who Really Organises the Olympics?—Delegating the Games

Just as many actors work within the Olympic Movement, many of these actors work to put on the Olympic Games. Although the IOC is tasked with “ensuring the regular celebration of the Olympic Games,”¹⁰³ the IOC does not organize and execute the Games itself.¹⁰⁴ The actual execution of the Games is left to an OCOG, the Host City, and the NOC of the host country. This Part will discuss the role of the IOC, and then move on to examine the other actors.

4.1. The Role of the IOC in the Olympic Games

The IOC performs three roles in regards to the Olympic Games: (1) holds the intellectual property rights to the Olympic Games; (2) selects the host of the Games; and, (3) coordinates the various organisations involved in executing the Games. First, the IOC is the rights-holder to the ‘Olympic Games’ brand, and its intellectual property rights. These rights include the name ‘Olympics’, and the iconography of the Olympic rings and the

¹⁰³ Olympic Charter (n 2) Rule 2.3.

¹⁰⁴ These have been findings of fact in two cases: *San Francisco Arts v USOC*, 107 S.Ct. 2971 (1987) (where the United States Olympic Committee successfully halted the organizing committee for the “Gay Olympic Games” from using the trademarked term “Olympics”); and in *Sagan v Vancouver Organising Committee*, 2009 BCCA 522, at paras. 10–11 (finding that “Not only does the IOC govern the Olympic Games, it also owns all of the intellectual property associated with them. The marketing of that brand through exclusive sponsorships, ticketing and broadcast revenues funds the Games. While it owns and controls the Olympic Games, the IOC does not itself organize them.”).

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Olympic torch.¹⁰⁵ The IOC and the other members of the Olympic Movement fiercely protect these rights. The USOC is an example of a particularly active actor in this regard. It successfully enjoined the use of the term ‘Gay Olympics’,¹⁰⁶ and unsuccessfully sought to enjoin the use of the Olympic rings in protests against the conversion of the 1980 Lake Placid Winter Olympic Games’ Athletes’ Village into a prison.¹⁰⁷ The active enforcement of the intellectual property rights of the IOC has led some to question whether the USOC is overzealous in this arena.¹⁰⁸ For instance, the USOC sent a cease-and-desist order to the organisers of a knitting competition in the USA. The competition was to be held while watching the 2014 Sochi Winter Olympic Games on television, and were called the ‘Ravelympics’. The USOC argued that the name “tends to denigrate the true nature of the Olympic Games”.¹⁰⁹ The letter was met with harsh public criticism, and the complaint eventually dropped.

Second, the IOC selects the host of the Olympic Games.¹¹⁰ In selecting the host of the Olympic Games, the IOC conducts a host selection process that takes place in two stages: the Candidature Acceptance Procedure, and the Candidature Procedure (also known as the Applicant City and the Candidate City stages). In each stage, the IOC has a questionnaire for the bidding cities to answer, on topics ranging from infrastructure, to finances, and the regulatory system that will be put into place to support the Olympic Games. Cities are shortlisted by the IOC Executive Committee following the Applicant City stage, and the Candidate Cities then proceed to a final vote from the IOC Session to select the host of the Olympic Games. The host selection process will be outlined in more detail in Chapter Five.

¹⁰⁵ Olympic Charter (n 2) Rules 7–14.

¹⁰⁶ *San Francisco Arts & Athletics, Inc. v United States Olympic Committee*, 483 U.S. 522, 107 S.Ct. 2971 (1987) (finding that the ‘Gay Olympic Games’ would infringe on the USOC’s rights over the use of the word ‘Olympic’). The event is now known simply as the ‘Gay Games’.

¹⁰⁷ *STOP the Olympic Prison v United States Olympic Committee*, 489 F.Supp. 1112 (SDNY 1980) (finding that a poster bearing five interlocking iron rings similar to the Olympic rings to protest a plan to convert the Lake Placid Olympic Village into a prison did not violate any trademarks). The Olympic Village was eventually converted into a prison, and is now the Federal Correctional Institution, Ray Brook.

¹⁰⁸ See, e.g., Colbrook (n 90) 57.

¹⁰⁹ Juliet Macur, ‘U.S.O.C. Knits a Controversy’ *New York Times* (New York, 21 June 2012)

<<http://london2012.blogs.nytimes.com/2012/06/21/u-s-o-c-knits-a-controversy/>> accessed 12 August 2014.

¹¹⁰ Olympic Charter (n 2) Rule 18.2.2.4.

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Third, the IOC plays a vital coordinating role in various areas related to the Olympic Games. The IOC acts as a fount of institutional knowledge for bidding cities, through its Olympic Games Knowledge Management system, and workshops that it holds for cities bidding to host the Games. The IOC also sets up a Coordination Commission, discussed in Chapter Six, which works with the OCOG, the Host City, and the NOC on the one hand, and the IFs and IOC on the other. Finally, the IOC engages in other activities such as securing global sponsorship rights, which fund much of the Games.¹¹¹

In essence, when cities seek to host the Olympic Games, they are effectively seeking to hold a sporting event with the Olympic brand. Alternatively, a city could organise its own sporting event. Why, then, would a city seek to host an Olympic Games, and submit to the rules of the IOC? First, attachment to the Olympic brand brings instant global recognition that could not be obtained by a city just hosting its own, independent sports event.¹¹² Second, by receiving the rights to host the Olympic Games, the city obtains the imprimatur of the IOC. As a result, the IFs within the Olympic Movement will cooperate to ensure that the best athletes in the world will compete, ensuring that the public gets to see the ‘one true champion’ crowned.¹¹³ Without the approval of the IOC and IFs, an independently-organised event may not be able to feature top athletes, lest they be barred by the IF. As of this writing, this situation is being challenged at the European Commission for violating EU competition laws.¹¹⁴ Third, the city obtains the

¹¹¹ Namely, through the IOC’s The Olympic Partners (‘TOP’) Programme.

¹¹² The Olympic Rings are arguably the most-recognized brand in the world, recently achieving a brand-recognition rate of 97%, ahead of Coca-Cola. Gary Anderson, ‘Olympic brand recognition at 97 per cent following London 2012, claims British Sports Minister’ (*Inside the Games*, 05 July 2013)

<<http://www.insidethegames.biz/olympics/summer-olympics/2012/1014957-olympic-brand-recognition-at-97-per-cent-following-london-2012-claims-british-sports-minister>> accessed 13 September 2014. In prior years, recognition of the Olympic Rings was over 90%, and greater than that of McDonalds. Greg Andranovich, Matthew J. Burbank and Charles H. Heying, ‘Olympic Cities: Lessons Learned from Mega-Event Politics’ (2001) 23 *Journal of Urban Affairs* 113, 114; Anne M. Wall, ‘The Game Behind the Games’ (2002) 12 *Marquette Sports Law Review* 557, 581.

¹¹³ See Richard Pomfret, John K. Wilson, and Bernhard Lobmayr, ‘Bidding for Sport Mega-Events’ (2009) University of Adelaide School of Economics Research Paper No. 0089 (2009-30), 9

<<http://www.economics.adelaide.edu.au/research/papers/doc/wp2009-30.pdf>> accessed 13 September 2014.

¹¹⁴ Two Dutch speed skaters were prohibited by the International Skating Union from taking part in a skating event the Icederby Grand Prix. The inaugural event was to be held in Dubai, United Arab Emirates, offering US\$1.7 million in prize money, and a minimum payout of over \$37,000 to speed skaters – far more than they would earn in normal events. The International Skating Union prohibited athletes and officials from taking part in the event out of concerns that the event was linked to gambling. The European Commission is, as of this writing, looking into claims that the restrictions violate European Union competition law. Danielle Rossingh, ‘Skaters’ Lawsuit May End Sports Bodies’ Grip on Competition’ *BloombergBusiness* (3 December 2014)

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aforementioned institutional and financial support from the IOC and the rest of the Olympic Movement, thus increasing the chances of putting on a high-quality, successful event.

Although the IOC is not directly involved in organising the Games, it should not be seen as ‘merely’ a coordinating body that is powerless. It is through its role as the selector of the host, and through its coordination role that the IOC sets out the rules and standards around the Olympic Games.

4.2. Other Actors Involved in Executing the Olympic Games

The organisation of the Olympic Games is carried out by a group of other actors: the OCOG, the NOC, and the Host City. The OCOG is the primary body that organises the Games, responsible for selecting contractors to build venues, lodging athletes and officials, organizing medical services, and reporting on the Games afterwards. Its board is comprised of, at a minimum, national IOC members, the President and Secretary General of the NOC, a representative of the host city, and an athlete that participated in the preceding Summer or Winter Olympic Games.¹¹⁵ The NOC is responsible mostly for sport-related matters.

On the public sector side, the Host City itself is heavily involved in the organisation of the Games. The Host City often creates an Olympic Delivery Authority (‘ODA’, although it may go by other names) that is responsible for the delivery of the public services, such as provision of infrastructure.¹¹⁶ For example, the ODA set up for the London 2012 Summer Olympic Games was responsible for delivering the physical infrastructure (including purchasing land and applying for planning permission), creating the Olympic Transport Plan, and disseminating information on ambush marketing and street trading (including possessing the power to initiate criminal proceedings on these matters).¹¹⁷ The ODAs often possess a wide scope of powers. As Mark James and Guy Osborn put it: “No other public body combines the functions of a local council, planning

<<http://www.bloomberg.com/news/articles/2014-12-02/skater-s-lawsuit-may-end-sports-bodies-grip-on-competition>> accessed 24 April 2015.

¹¹⁵ Host City Contract (n 73) art. 2.

¹¹⁶ See John Horne and Garry Whannel, *Understanding the Olympics* (Routledge 2012) 3; James and Osborn (n 75) 416; Mark Brabazon, ‘The Legal Structure of the Sydney Olympic Games, (1999) 22 University of New South Wales Law Journal 662, 676–78.

¹¹⁷ London Olympic Games and Paralympic Games Act 2006 (c.12).

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authority, transport executive, trading standards office and police service.”¹¹⁸ Beyond the Host City and the ODA, other levels of governments are involved in the Olympic Games, although this may be limited to issues such as funding.

A final relevant group of actors are private contractors, and their workers, or government agencies, and their employees. These are the actors that are the most directly involved in executing the Games. These actors may also be most directly involved in the worst outcomes of the Olympic Games, such as contractors violating the rights of their workers. These actors are important, particularly as a source of the worst outcomes of the Games. However, this research is narrowing its scope to those involved in the overall strategy of organising the Games, rather than those at the ground-level.

5. Conclusion: Who is Accountable for the Olympic Games—The Problem of Many Hands

This chapter has examined the Olympic Movement, the IOC, and the Olympic Games. The aim of this chapter was to familiarize readers with the international sporting world, and the veritable ‘alphabet soup’ of organisations working alongside the IOC: NOCs, IFs, NFs, and OCOGs. Organisations such as CAS and WADA help regulate the Olympic Movement, while governments, sponsors, and media, also play a role in the broader ‘Olympic system’. Additionally, many of these actors organise the Olympic Games under the coordination of the IOC.

The multiplicity of actors involved in the Olympic Games creates a “problem of many hands”.¹¹⁹ With so many actors involved in the Olympic Games, at varying levels of responsibility, it can be difficult to trace ultimate accountability for any action. The IOC could say that they only select the host, they do not organise the Games. The OCOG could say that any problems were not its fault, but were the responsibility of the contractors it hired, and that the host country should have monitored the situation more closely. And on it goes.

¹¹⁸ James and Osborn (n 71) 416.

¹¹⁹ Mark Bovens, ‘Analysing and Assessing Accountability: A Conceptual Framework’ (2007) 13 *European Law Journal* 447, 457 (citing Dennis F. Thompson, ‘Moral Responsibility of Public Officials: The Problem of Many Hands’ (1980) 74 *American Political Science Review* 905).

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Turning to the concept of legitimacy, the question asked is: can the IOC be said to be structurally legitimate? In terms of the source of the IOC's authority, the Olympic Charter is a private agreement. It is certainly not a democratic document, nor a document agreed-to by states. The Charter is malleable at the whim of the IOC, through the IOC Session. The source of the Olympic Games also resides in the Olympic Charter, but also in the host city questionnaires put forth by the IOC. Concerns with the host selection process are addressed under 'procedural legitimacy' in Chapter Five, but the transparent nature of many of the various documents (a significant exception until recently being the Host City Contract) can be said to improve the legitimacy of the Olympic Games.

In terms of subject-matter expertise, the IOC and the other members of the Olympic Movement, are subject-matter experts in regards to sport. As to the Olympic Games, the IOC holds a deep institutional knowledge, and a key coordinating role as to the Olympic Games. However, the IOC licenses the right to host the Games to host cities who then set up another entity, an OCOG, to organise the Games. The question is, then, could cities organise an event such as the Olympic Games on their own? Why have the IOC? The answer lies in the IOC's coordinating role, and the near-monopolistic control that the Olympic Movement has over sport. The short-lived competitors to the Olympics, discussed in Chapter Two, show the low likelihood of success in organising an event without the IOC's support.

When it comes to independence, the IOC maintains a high degree of independence from other actors, actively fighting political 'interference'. The IOC does not have states members, and is nigh-immune from domestic courts. The IOC also co-opts its own membership. While at a basic level, the more independent an actor is, the more likely it is to be legitimate, this may be a case of 'too much of a good thing'. The IOC, given that it is seemingly accountable to no one may simply be too independent.

Finally, the structure of the IOC Session raises questions of representation. The IOC is comprised of a maximum of 115 members, who are co-opted by the IOC, in comparison to the 206 countries with NOCs. However, the IOC does enable representation from the actors it regulates, namely athletes, IFs, and the NOCs themselves. The counter to this point is that IOC members are not representative of countries to the IOC, but are

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representatives of the IOC to their countries. This setup likely has roots in the IOC's history as an organisation run by the 'leisured class'. If IOC members were somehow selected by states, then it is likely that the IOC would be more legitimate. However, the IOC also needs to balance a need for representation from states with representation from other actors within the Olympic Movement. Perhaps some regional balance (x members per region), or some other formula could be used to make the IOC more representative going forward.

Given the above, the IOC has some problems with structural legitimacy. It is based on a private agreement, and is perhaps too independent. Representation is also a concern. However, a structure that is not representative, or undemocratic does not necessarily lead to bad outcomes. Many states, business, and other organisations may have problems with structural legitimacy, but still 'deliver the goods'. Yet, as stated at the outset of this thesis, the IOC does not appear to do that, as discussed in the next chapter examining the worst outcomes of the Olympic Games.

Chapter Four

Substantive Legitimacy: ‘New’ Olympic Hosts and the Worst Outcomes of the Olympic Games

1. Introduction

Chapter Three revealed a structural problem with hosting the Olympic Games, a ‘problem of many hands’. As such, when the worst outcomes of the Olympic Games occur, accountability is difficult to establish. This chapter examines the substantive issue of the worst outcomes of the Olympic Games. The particular outcomes discussed in this chapter include violations of labour rights, forced evictions, environmental damage, and negative long-term legacies of the Games.

This chapter will examine the substantive legitimacy of the IOC and the Olympic Games. Namely, it will assess whether the IOC has lived up to its minimal moral responsibility, and whether it possesses institutional integrity. In conducting the analysis, I ask three research questions. First, what are the international legal obligations of the IOC in regards to the worst outcomes of the Olympic Games? Second, what are the worst outcomes of the Olympic Games? Third, why not just turn to the state to prevent and remedy the worst outcomes of the Games?

In answering these questions, this chapter will proceed over four additional parts. Part Two will examine the minimum moral responsibility and institution integrity required of the IOC, focusing on human rights, and the ‘legacies’ of the Games. Part Three will examine the increase in the frequency of hosting the Olympic Games (and other sports mega-events) in emerging market economies, and why that is occurring. Part Four will discuss some of the worst outcomes of hosting the Olympic Games: abuses of labour rights, forced evictions, environmental damage, and other negative ‘legacies’. Part Six will conclude with an assessment of the substantive legitimacy of the IOC.

2. Minimum Moral Responsibility, Institutional Integrity, and the Olympic Games

2.1. Minimum Moral Responsibility and the IOC

States are the target of international human rights instruments, and are expected to act as the guarantor of human rights for their citizens. International law generally does not provide that other actors, such as NGOs, have positive duties under international human rights law.¹ This situation becomes highly problematized when a state is unwilling or unable to protect the rights of its citizens.² In cases where states fail to fulfil their role as the ultimate guarantor of human rights, particularly in cases involving transnational actors, then the attention must be turned to the transnational actor. As such, the perception of the state as the primary, if not sole, actor is beginning to change, and underwent a significant shift in 2011 with the introduction of suggested standards for international organisations and transnational corporations.

In 2011, the International Law Commission adopted the *Draft Articles on the Responsibility of International Organizations*.³ These *Draft Articles* build upon the basic premise, confirmed by the International Court of Justice, that IOs have international legal obligations.⁴ The logical consequences of possessing obligations, as Kristina Daugirdas elegantly puts it, is that:

IOs themselves are responsible for the violations. If the IOs were not responsible, then their member states would be responsible in their stead, and this outcome contradicts the separate legal personality of the IO. The

¹ Jan Klabbers, *International Law* (Cambridge University Press 2013) 124.

² Eisuke Suzuki and Suresh Nanwani, 'Responsibility of International Organizations: the Accountability Mechanisms of Multilateral Development Banks' (2005–2006) 27 *Michigan Journal of International Law* 177, ("In short, private individuals and groups are still dependent on a protecting state for access to international arenas. The inherent contradiction in the protection of nationals by states is that such protection does not apply to the nationals of the state in which human rights deprivations are taking place.").

³ International Law Commission, *Draft Articles on the Responsibility of International Organizations* (United Nations 2011).

⁴ *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) 1949, ICJ Reports (1949) 174, at 179; *Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt* (Advisory Opinion) 1980, ICJ Reports (1980) 73, at 89–90.

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alternative—that nobody would be responsible—is widely considered intolerable.⁵

The *Draft Articles* state that IOs are responsible for actions that violate international law—whether it is their own actions, or actions undertaken by their agents.⁶ This responsibility includes the human rights, environmental protection, and similar obligations under international law. This responsibility gives rise to an obligation to cease the act, and to remedy the injury caused.⁷ The *Draft Articles* set out expected standards of behaviour from IOs, but are not at this point as such considered to be binding international law. As such, IOs may decide to take the *Draft Articles* into account in their decision-making, particularly to enhance their legitimacy.⁸

Also in 2011, the United Nations’ Human Rights Council endorsed the *Guiding Principles on Business and Human Rights*.⁹ The project was led by international relations scholar John Ruggie, and are thus known as the ‘Ruggie Principles’. The principles recognise that while states are the ultimate protector against human rights abuses, corporations also have a responsibility to respect human rights. The Ruggie Principles suggest that businesses should respect human rights, and as such, in avoiding human rights abuses, they should take “adequate measures for their prevention, mitigation and, where appropriate, remediation.”¹⁰ The Principles also address the basic standards that corporations should be held to, namely the Universal Declaration of Human Rights, the ICCPR, the ICESCR, and the ILO’s Declaration on Fundamental Principles and Rights at Work.¹¹ Depending on circumstances, businesses are encouraged to consider other standards relating to indigenous peoples, women, minority groups, persons with

⁵ Kristina Daugirdas, ‘Reputation and the Responsibility of International Organizations’ (2014) 25 *European Journal of International Law* 991, 995.

⁶ *ibid* Arts. 5, 6.

⁷ *ibid* Arts. 30, 31.

⁸ Daugirdas (n 5) 993.

⁹ United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (United Nations 2011) (Ruggie Principles).

¹⁰ *ibid* 13.

¹¹ *ibid*.

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disabilities, and migrant workers and their families.¹² These principles apply not just to the particular corporations, but also to those in their supply chains and in other relationships.¹³

What value might the *Draft Articles on the Responsibility of International Organizations* or the Ruggie Principles provide for an analysis of the minimum moral responsibility of the IOC? The IOC is neither an IO nor a corporation, but an NGO. However, the IOC bears strong similarities to both types of actors, more so than a typical NGO. The IOC is similar to an IO in that it governs a global activity, and its actions in regards to regulating global sport are given a significant amount of deference by domestic courts, to the point of near-*de facto* immunity.¹⁴ As such, although the IOC is not officially an IO, it is often treated in a similar manner to an IO. The IOC is also similar to a corporation, despite its official status as a not-for-profit association. The IOC engages in a variety of commercial activities with sponsors, manufacturers, and media companies, amongst others. These activities produce billions of dollars in revenue for the IOC, much of which is used to fund international sport more generally.¹⁵ Given its similarities to both IOs and corporations, the IOC should be held to a similar normative standard as these actors. The alternative would be that the IOC has no normative duty at this time based on its status as an NGO, which given the IOC's size and influence, is an 'intolerable' conclusion. As such, I will use the *Draft Articles* and the Ruggie Principles as benchmarks for the IOC.

The basic standards set out by both the *Draft Articles* and the Ruggie Principles are similar in their general scope: an international actor should be responsible for the actions of themselves and their agents. The *Draft Articles* focus on 'international law' more generally, providing a broad scope of responsibility, while the Ruggie Principles focus on respecting human rights in particular. With this in mind, I suggest that a narrow conception of the IOC's minimum moral responsibility is to ensure that it and its agents do not violate fundamental human rights norms, particularly those set out in the UDHR, ICCPR, ICESCR, and the ILO's Declaration on Fundamental Principles and Rights at Work, which

¹² *ibid* 14.

¹³ *Ibid*.

¹⁴ *Infra* Chapter Three, Part 3.4.

¹⁵ In the years 2009–12, the IOC's marketing revenue was over US\$8 billion. International Olympic Committee, 'Olympic Marketing Fact File: 2014 Edition' (2013) 6.

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are referred to in the Ruggie Principles. Similar to the Ruggie Principles, other rights should be considered depending on the context of the activity.

2.2. Institutional Integrity—‘Legacy’

Institutional integrity requires that the institution fulfil its mandate. The mandate of the IOC in regards to the Olympic Games, is to “ensure the regular celebration of the Games”.¹⁶ But, should the Games be held regardless of the cost? The costs (at least, non-financial) are generally addressed under the rubric of ‘minimum moral responsibility’, above. However, what about the benefits? Do the Games bring about the benefits promised? To examine this question, I turn to the ‘legacy’ of the Games.

The IOC often justifies hosting the Olympic Games in terms of ‘legacy’. The legacy of the Games is arguably the issue of primary concern to the IOC.¹⁷ However, what ‘legacy’ is remains somewhat nebulous. John MacAloon has derided the term as “referential enough to seem substantive and readily hypostatized, yet it is open enough to attract the claims and particular attentions of paid specialists.”¹⁸ Holger Preuss has attempted to define ‘legacy’ as: “Irrespective of the time of production and space, legacy is all planned and unplanned, positive and negative, tangible and intangible structures created for and by a sport event that remain longer than the event itself.”¹⁹

The IOC has made promises that various beneficial legacies will arise as a result of hosting the Games: sporting, social, environmental, urban, and economic.²⁰ In particular, the IOC has claimed that hosting the Games is a driver of economic development:

The presence and commitment of government, the private sector and sports authorities in the three Candidate Cities demonstrates the importance of the Games on a local, regional and national level and

¹⁶ International Olympic Committee, Olympic Charter (2014) Rule 2.3 (Olympic Charter).

¹⁷ See John. J. MacAloon, “‘Legacy’ as a Managerial/Magical Discourse in Contemporary Olympic Affairs” (2008) 25 *The International Journal of the History of Sport* 2064.

¹⁸ *ibid.* 2065.

¹⁹ Holger Preuss, ‘The Conceptualisation and Measurement of Mega Sport Event Legacies’ (2007) 12 *Journal of Sports and Tourism* 207, 211.

²⁰ International Olympic Committee, ‘Olympic Legacy’ (2012) 9.

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underlines that, even in the context of the current global economic climate, organising the Games represents a catalyst for change and an opportunity for social, economic and environmental development.²¹

The IOC has also credited Canada's top placement in the FutureBrand 2010 Country Brand Index "thanks in large part to the 2010 Winter Games—proving beyond doubt the benefits of hosting a major international sporting event such as the Games."²² Therefore, in order to support its claim to institutional integrity, the IOC should not only oversee the regular celebration of the Olympic Games, but of Olympic Games that provide the promised beneficial legacies to the hosts.

3. The Olympic Games and Emerging Market Economies—An Accountability Gap

The Olympic Games, like most sports mega-events, are ambulatory, with each new edition taking place in a different city.²³ For much of their history, the Olympic Games have been held almost exclusively in advanced economies. In recent years, emerging market economies have hosted an increasing share of Olympic Games. What problems might this shift bring about for the hosts and for the IOC?

3.1. Europe as the Centre of Global Sport

The IFs are largely located in Europe. Twenty-eight IFs belong to the Association of IFs for the Summer Olympic Games, and seven IFs belong to the Association of IFs for the Winter Olympic Games. These IFs have their sports represented in the Olympic programme. Other IFs that do not have sports in the Olympics, but are recognized by the IOC are part of the Association of IOC Recognised International Sports Federations. Of the thirty-five IFs with sports on the 2014 and 2016 on the Olympic programme, thirty-three have their

²¹ International Olympic Committee, 'Report of the 2020 Evaluation Commission: Games of the XXXII Olympiad' (2013) 4.

²² 'Olympic Legacy' (n 20). The FutureBrand Country Brand Index measures the 'brand' of countries based upon five broad dimensions (and various associated sub-dimensions): value system, quality of life, good for business, heritage and culture, and tourism. See FutureBrand, 'Country Brand Index: 2012–13' (2012) 70.

²³ Some sporting events, such as tennis' 'Grand Slams', or golf's Masters tournament, always take place at the same locations annually.

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headquarters in Europe, with twenty-three headquartered in Switzerland. The only two IFs that are part of the Olympic Games (as of this writing) and not based in Europe are the Badminton World Federation (Malaysia) and the World Taekwondo Federation (South Korea). The International Triathlon Union moved its headquarters from Vancouver, Canada to Lausanne, Switzerland in 2014.

The IOC itself is also Euro-centric in its composition. As of July 2015, 43 of the 101 IOC Members (43%) were European.²⁴ Of the 71 countries that IOC Members represented the IOC in, 23 (32%) were European. Of these 23 European countries, eleven had multiple IOC Members, while only seven non-European countries had multiple IOC Members. In addition, nine of the ten presidents of the IOC have been European, with the American Avery Brundage the sole exception. Even a cursory glance at the organisation of global sport reveals the Euro-centricity of the regime.

3.2. Charting the Migration of Sports Mega-Events

Although the world of sport is largely European, the hosting of sports mega-events is becoming more global in scope. Søren Bang recently examined the hosting of world championships in sport between 1990 and events where the host was selected by 2013.²⁵ Bang divided his analysis into geographic areas—roughly by continent—and found a modest increase in hosting sporting events in countries in Africa, Latin America, the Middle East, and Asia (minus Japan). Bang’s analysis suggests that the world of sports mega-events is becoming “flatter”,²⁶ and creating a situation where “the accepted world order for mega events [is] being turned on its head in front of our eyes.”²⁷

²⁴ ‘European’ is defined as countries that are members of the Council of Europe as of July 2015.

²⁵ Søren Bang, ‘Europe is Still Dominating the Global Event Race’ (*PlaytheGame*, 20 May 2014) <www.playthegame.org/news/detailed/europe-is-still-dominating-in-the-global-event-race-5754.html> accessed 26 May 2015.

²⁶ To borrow the phrase of Thomas Friedman that “the world is flat”, as his response to a third wave of globalization, which, among other things, is enabling non-Western, non-white groups and individuals to compete globally. Thomas L. Friedman, *The World Is Flat* (3rd edn, Picador 2007) 7–11.

²⁷ Malcolm Foley, David McGillivray and Gayle McPherson, ‘Events Policy: The Limits of Democracy’ (2011) 3 *Journal of Policy Research in Tourism, Leisure and Events* 321, 321 (citing Maruice Roche, *Mega-Events and Modernity: Olympic and Expos in the Growth of Global Culture* (Routledge 2000), for the phrase “accepted world order for mega events”).

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Given that the Olympic Games are being examined here, I will briefly examine whether the Olympic Games are following the same overall trend that Bang found. To do this, I will build off Bang's analysis, hypothesizing that sporting events are moving from advanced economies to emerging market economies. I will examine the Summer Olympic Games, the Winter Olympic Games, and the Youth Olympic Games, from the first modern Olympic Games in 1896 until the Games with the most recently-selected hosts: the 2020 Summer Games, the 2022 Winter Games, and the 2020 Youth Olympic Games. To measure possible movement, I will use the year 2000 as a dividing line, both because of its general significance as the start of the millennium, but also because it was during Beijing's bid to host the 2000 Olympic Games that human rights arose as a significant issue in host selection. In dividing the world, I will rely upon the categorization of 'advanced economies' and 'emerging market economies' by the International Monetary Fund ('IMF').²⁸

Fig. 5 – Hosting of the Olympic Games by Economic Groups

Hosting of the Olympic Games by Economic Grouping (1896–2022)

| | <i>Summer Olympics</i> | <i>Winter Olympics</i> | <i>Youth Olympics</i> |
|----------------------------------|------------------------|------------------------|-----------------------|
| <i>Advanced Economies</i> | 25 | 21 | 4 |
| <i>Emerging Market Economies</i> | 4 | 3 | 2 |

Hosting of the Olympic Games by Economic Grouping (1896–1999)

| | <i>Summer Olympics</i> | <i>Winter Olympics</i> | <i>Youth Olympics</i> |
|----------------------------------|------------------------|------------------------|-----------------------|
| <i>Advanced Economies</i> | 21 | 17 | — |
| <i>Emerging Market Economies</i> | 2 | 1 | — |

²⁸ International Monetary Fund, *World Economic Outlook: Uneven Growth* (International Monetary Fund 2015) 188–91.

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Hosting of the Olympic Games by Economic Grouping (2000–2022)

| | <i>Summer Olympics</i> | <i>Winter Olympics</i> | <i>Youth Olympics</i> |
|----------------------------------|------------------------|------------------------|-----------------------|
| <i>Advanced Economies</i> | 4 | 4 | 4 |
| <i>Emerging Market Economies</i> | 2 | 2 | 2 |

Hosting of the Olympic Games by Economic Grouping (1896–2022)

| | <i>All-Time</i> | <i>Prior to 2000</i> | <i>Since 2000</i> |
|----------------------------------|-----------------|----------------------|-------------------|
| <i>Advanced Economies</i> | 50 (85%) | 38 (93%) | 12 (67%) |
| <i>Emerging Market Economies</i> | 9 (15%) | 4 (7%) | 6 (33%) |

Since 2000, the Olympic Games have increasingly been hosted in emerging market economies. The share of Olympics held in emerging market economies has increased from a mere 7% prior to the 2000 Games, to a more robust 35% since the year 2000. This is in spite of the Winter Games remaining largely in advanced economies due to climate limitations, which may potentially skew the results. Also of note, most of the hosts that are emerging market economies are one of the ‘BRICS’—Brazil, Russia, India, China, and South Africa. Much of South and Southeast Asia, Africa, and South America remain absent.

The above snapshot fails to paint the entire picture. One drawback is the ahistorical method used. I do not measure whether the states that hosted the Games were advanced economies at the time they hosted the Games. Instead, I considered their current level of development, and worked backwards. This has the opportunity to be misleading. Preliminary research has shown that the absolute level of economic development amongst current emerging market economies that host the Olympics is equivalent to the absolute

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levels of economic development that advanced economies possessed when they hosted the Olympics in the 1930s and 1960s.²⁹ Thus, it might seem that emerging market economies are reaching a level where they could host the Games. However, it should be kept in mind that the Games themselves have also expanded in scope and complexity since the mid-twentieth century.

Despite the critiques, a pattern is emerging where states that are developing economically (and politically), are increasingly hosting the Olympic Games and other sports mega-events. It is possible that this shift is a short-term correction, a ‘burst’ of new hosts in the spirit of making sure every country gets its ‘turn’. It is possible that once enough emerging market economies—particularly the BRICS—host sporting events, these events will return to their traditional Europe-North America-East Asia focus. An argument may be made for this case by looking to the examples of South Korea and Japan hosting the 2018 and 2020 Olympics, and with a European/North American race to host the 2024 Summer Olympics.³⁰ However, it is more likely that even though this ‘burst’ of emerging market economies hosting sporting events will die out somewhat, they will remain part of the sports mega-event circuit going forward.

3.3. Why Are the Olympic Games Migrating to Emerging Market Economies?

It is not enough to understand simply that the Olympic Games (and other sports mega-events) are increasingly being held in emerging market economies. It is also necessary to understand *why* this migration is taking place. I suggest that the interests of the countries that are seeking to host these events, and of the sporting organisations that hold the rights to these events are creating a dynamic where events are more likely to be held in emerging market economies than in the past. The first half of this dynamic is a series of ‘pull’ factors from advanced economies. The second half is a series of ‘push’ factors on the part of international sporting organisations.

²⁹ Suman Bery, ‘The Next Twenty Years’ *Business Standard* (New Delhi, 13 August 2008) <http://www.business-standard.com/article/opinion/suman-bery-the-next-twenty-years-108081301008_1.html> accessed 15 September 2014 (finding that the then-emerging hosts of Germany, Italy, Japan, Mexico, and South Korea had similar real per capita GDP levels to China in 2007).

³⁰ The bidding cities for the 2024 Games are: Budapest, Hamburg, Paris, Rome, and Los Angeles.

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3.3.1. ‘Pull’ Factors

The increase in hosting, and bidding to host, sports mega-events is evidence of an increased demand by emerging market economies. This demand is mainly driven by four factors: economic development, “shock capitalism”, nation-building, and personal preferences of state authorities. Not all of these factors apply to all emerging market economies. Each country has different goals and different decisions-making processes when it comes to making a decision to host a sports mega-event. However, it is likely that one of these factors will drive the decision-making process, and serve an interest of the country.

First, and perhaps foremost, emerging market economies seek to host sports mega-events as a catalyst for economic development.³¹ This rationale has explicitly been used in bids to host the Olympic Games.³² These countries are playing the role of a neo-liberal ‘competition state’,³³ Neo-liberal theory conceives of the state as an actor in the global (and globalized) marketplace,³⁴ competing with other states for resources. In the case of sports mega-events, the resources include investment, tourism, and economically-valuable permanent residents.³⁵ To be successful, these states require something to stand out, a brand to attract the best and brightest to work and live.³⁶ Hosting a sports mega-event is seen as a way to ‘jump-start’ the competitiveness of the state. The Olympic Games are simultaneously a global event (and brand), with a deeply local connection to the host city,³⁷ making them, in the minds of the bidders, a perfect congruence of the global and the local. The host city/state can use the Games to enhance their image, creating an image of an

³¹ David R. Black and Janis van der Westhuizen, ‘The Allure of Global Games for ‘Semi-Peripheral’ Polities and Spaces: A Research Agenda’ (2004) 25 *Third World Quarterly* 1195, 1207; M. Malfas, E. Theodoraki, and B. Houlihan, ‘Impacts of the Olympic Games as Mega-Events’ (2004) 157 *Municipal Engineer* 209, 212.

³² See, e.g., Baku 2020, Applicant City 7; Istanbul 2020, Candidate City (Vol. 1) 23.

³³ Black and Westhuizen (n 31) 1207; John R. Gold and Margaret M. Gold, ‘Olympic Cities: Regeneration, City Rebranding and Changing Urban Agendas’ (2008) 2 *Geography Compass* 300, 301; John Horne, ‘The Four ‘Knowns’ of Sports Mega-Events’ (2007) 26 *Leisure Studies* 81, 84; Greg Andranovich, Matthew J. Burbank and Charles H. Heying, ‘Olympic Cities: Lessons Learned from Mega-Event Politics’ (2001) 23 *Journal of Urban Affairs* 113.

³⁴ See Tore Fougner, ‘The State, International Competitiveness and Neoliberal Globalisation: Is There A Future Beyond “The Competition State”?’ (2006) 32 *Review of International Studies* 165.

³⁵ Horne (2007) (n 33) 83.

³⁶ Black and Westhuizen (n 31) 1197–98.

³⁷ Paul Close, ‘Olympiads as Mega-Events and the Pace of Globalization: Beijing 2008 in Context’ (2010) 27 *The International Journal of the History of Sport* 2976, 2977–79.

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emerging economy as a ‘can-do’ state, or to serve as a ‘coming-out’ party for a state.³⁸ Even merely bidding to host the Games has been viewed as a way to reap development benefits.³⁹ This strategy is not without risks, however. If an emerging economy fails in its execution of a mega-event, the failure can re-enforce negative stereotypes about the state. This outcome was experienced by India following the difficult experience that New Delhi had in hosting the Commonwealth Games in 2011.⁴⁰

An alternative economic development argument focuses on recourse allocation. This argument suggests that local development is spurred because a sporting event host attracts resources from the central political economy that it would not otherwise.⁴¹ This argument is generally applied to cities and regions that are peripheral to the central government of a host country: e.g., Atlanta, Calgary, Barcelona, and Sochi. However, most cities that have bid to host the Olympic Games in recent years, particularly cities in emerging market economies, are cities that are already at the centre of their country’s political economy, and are likely already receiving significant government funds: e.g., Beijing, Istanbul, Doha, Baku, and Almaty. Regardless, this is a relatively new argument, and the idea that hosting a sporting event ‘unlocks’ investment from a central government that would otherwise not be granted needs to be researched further.

A second factor, reflective of an extreme form of neoliberalism, is the use of sports mega-events as a form of “shock capitalism”. Naomi Klein has described the heart of

³⁸ *ibid* 2986, 2999; Richard Tomlinson and Orli Bass, ‘The BRICS: National and Urban Legacy Agendas’ in Wolfgang Maennig and Andrew Zimbalist (eds), *International Handbook on the Economics of Mega Sporting Events* (Edward Elgar 2012).

³⁹ See, e.g., Ulf Strohmayer, ‘Non-Events and their Legacies: Parisian Heritage and the Olympics that Never Were’ (2013) 19 *International Journal of Heritage Studies* 186; Heike C. Alberts, ‘Berlin’s Failed Bid to Host the 2000 Summer Olympic Games: Urban Development and the Improvement of Sports Facilities’ (2009) 33 *International Journal of Urban and Regional Research* 502 (stating that Berlin had a mixed record in having a failed bid spur infrastructure development).

⁴⁰ Jacquelin Magnay, ‘Commonwealth Games 2010: Disastrous Build-Up has Killed Off India’s Olympic Dream’ *The Telegraph* (London, 21 September 2010) <<http://www.telegraph.co.uk/sport/othersports/commonwealthgames/8016654/Commonwealth-Games-2010-disastrous-build-up-has-killed-off-Indias-Olympic-dream.html>> accessed 09 June 2015. Suman Mishra, ‘Projections of Power, News Framing, and India’s 2010 Commonwealth Games’ (2013) 24 *The Howard Journal of Communications* 178. The same author states that cultural and racial bias may be the reason for the focus on the problems being faced in the build-up to the Games. See also Nalin Mehta and Boria Majumdar, ‘For a Monsoon Wedding: Delhi and the Commonwealth Games’ in Wolfgang Maennig and Andrew Zimbalist (eds), *International Handbook on the Economics of Mega Sporting Events* (Edward Elgar 2012).

⁴¹ Black and Westhuizen (n 31) 1207.

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neoliberal economic development as one of “shock and awe”.⁴² When citizens are in a state of shock, actors (both public and private) can push through significant policy changes without popular consent. Shocks are caused by extraordinary events such as natural disasters, economic collapses, or terrorist attacks. These particular shocks are out of the control of the actors that seek to use them. It has recently been suggested by Graeme Hayes and John Horne that hosting the Olympic Games is also a shock,⁴³ and importantly, one that is in the control of the state. The compressed timeline of preparing for the Games, under the watchful, and judgemental, eye of the world, provides the shock needed for actors to push through desired policies with lower resistance from opposition groups. As an example, gentrification of a neighbourhood would likely require the state to follow various rules and procedures, which would slow down the process and also allow time and space for opposition to organize. Hosting an event such as the Olympic Games provides a reason to swiftly, and without using the standard procedures, evict residents from a neighbourhood. Although various ‘no Games’ movements attempt to fight these developments, they are often on their own in each city, dispersed across a variety of issue-areas, and lacking the global network that the Olympic Games have.⁴⁴

Third, hosting a mega-event can serve as an exercise in nation-building. Many emerging market economies are ethnically diverse and/or have an unsettled socio-cultural foundation.⁴⁵ For these states, hosting a sporting mega-event can become a common rallying point for its citizens.⁴⁶ Yet, creating such a rallying point can also have its darker side, as the event may be used to take the public’s attention away from substantive

⁴² Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Metropolitan Books 2007) 7–9.

⁴³ Graeme Hayes and John Horne, ‘Sustainable Development, Shock and Awe? London 2012 and Civil Society’ (2011) 45 *Sociology* 749, 752.

⁴⁴ Jules Boykoff, *Activism and the Olympics: Dissent at the Games in Vancouver and London* (Rutgers University Press 2014) 26, 165; Jean-Loup Chappelet, ‘Towards Better Olympic Accountability’ (2011) 14 *Sport in Society* 319, 327 (listing various ‘watchdog’ groups); Patrick M. Cottrell and Travis Nelson, ‘Not Just the Games? Power, Protest and Politics at the Olympic’ (2011) 17 *European Journal of International Relations* 729, 740 (stating that protests are about transnational issues as much as anything).

⁴⁵ Black and Westhuizen (n 31) 1205.

⁴⁶ *ibid* 1204. The same argument can be applied at the level of the host city. Short (n 40) 336. The same can be said for winning medals. Ivo van Hilvoorde, Agnes Elling and Ruud Stokvis, ‘How to Influence National Pride? The Olympic Medal Index as a Unifying Narrative’ (2010) 45 *International Review of the Sociology of Sport* 87.

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problems with the state, or may be used to create support for otherwise unpopular domestic programmes in a manner similar to the shock doctrine.⁴⁷

Finally, the decision to bid to host a sports mega-event in an emerging market economy may be as simple as a personal desire of those in charge. This argument has been made in regards to the Sochi Olympic Games, where the push to host came from Russian President Vladimir Putin.⁴⁸ This argument has also been made in regards to the bids to host the Olympic Games, and the eventual hosting of the 2015 European Olympic Games by Baku, Azerbaijan.⁴⁹ The President of Azerbaijan, Ilham Aliyev, was the president of the country's NOC for many years, while his wife, Mehriban Aliyeva, is the chair of the Baku 2015 European Games organising committee.

3.3.2. 'Push' Factors

In addition to the 'pull', or demand, from emerging market economies to host sports mega-events, there is also a 'push' for international sporting organisations to award their events to these countries. There are three main reasons that international sporting organisations are willing, if not eager, to have their events hosted in these countries: expanding markets, the ease of dealing with states that have a weaker rule-of-law, and a sense that 'it's time' for the states to host the events.

First, international sporting organisations are seeking to expand their markets both for consumption of their events (e.g., viewership, tickets), and for their sponsors. As Western economies begin to reduce consumption, international sporting organisations need to find new markets. While people in India or China may not watch Westernized sporting events, they appear far more likely to tune into a sporting event simply because it is taking place in their own country.⁵⁰ This increases the market not only for those holding the rights

⁴⁷ Scarlett Cornelissen, 'The Geopolitics of Global Aspiration: Sport Mega-Events and Emerging Powers' (2010) 27 *The International Journal of the History of Sport* 3007, 3013.

⁴⁸ Brett Forrest, 'Monopoly Games' (*ESPN The Magazine*, 22 January 2014) <http://espn.go.com/olympics/winter/2014/story/_/id/10323103/importance-sochi-olympics-vladimir-putin-espn-magazine> accessed 09 June 2015; Martin Müller, 'State Dirigisme in Megaprojects: Governing the 2014 Winter Olympics in Sochi' (2011) 43 *Environment and Planning* 2091, 2095.

⁴⁹ Matthew Moore, 'Backing Baku: 2016 Olympics in Azerbaijan?' *The Telegraph* (London, 30 April 2008) <www.telegraph.co.uk/news/1914142/Backing-Baku-2016-Olympics-in-Azerbaijan.html> accessed 09 June 2015.

⁵⁰ For instance, sixty-nine percent of China's population (824 million people) watched the opening ceremonies of the Beijing Olympic Games. Jon Swaine, 'Beijing Olympics: Opening Ceremony Watched by 15 Per Cent of World's Population' *The Telegraph* (London, 12 August 2008)

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to sporting events for ticket and merchandise sales, but also increases the rights fees they can charge to television broadcasters, sponsors, and advertisers.

Second, emerging market economies may be attractive as hosts for sports mega-events precisely because they have a weaker adherence to the rule of law. A weaker rule of law allows for streamlined decision-making, which is favourable to international sporting organisations as it leads to less need to compromise, and a less likely chance of delay.⁵¹ As one example, to provide the significant funding for a sports mega-event, countries with a weaker rule of law are less likely to have to subject the matter to a public referendum. Given that the IOC is concerned about the chance that a government is required to face a referendum,⁵² a firm answer of ‘no referendum is required’ is likely reassuring. The bidding for the 2022 Winter Olympic Games, discussed in Chapter Two, is a prime example of the negative impacts of referendums for the IOC.

Third, international sporting organisations may be awarding the rights to host their mega-events as a way to send a message to the broader international community. One such message has been to facilitate or reward integration into the international system. This was arguably the case in the 1960s and 1970s when Rome, Tokyo, and Munich were awarded the Summer Games—three cities which were part of the ‘Axis’ powers of the Second World War.⁵³ A similar case can be made for awarding the 2008 Summer Games to Beijing, welcoming it into the global community.⁵⁴ A second message is that ‘it’s time’ for new hosts, usually as a representative of a region heretofore ignored in the sports mega-event hosting cycle, to host these events. South Africa’s hosting of the 2010 FIFA World Cup was seen as an ‘African’ World Cup,⁵⁵ while Qatar’s FIFA World Cup is seen as bringing a sports mega-event to the Middle East.

<<http://www.telegraph.co.uk/sport/olympics/2545106/Beijing-Olympics-Opening-ceremony-watched-by-15-per-cent-of-worlds-population.html>> accessed 16 July 2015.

⁵¹ Foley, et al (n 27) 323.

⁵² International Olympic Committee, 2022 Candidature Acceptance Procedure: XXIV Olympic Winter Games (2013) 84 (stating, *inter alia* “If a referendum is required, this should be carried out prior to the selection of Candidate Cities and the results of such a referendum should be provided to the IOC”).

⁵³ Black and Westhuizen (n 31) 1206.

⁵⁴ Close (n 37) 2990.

⁵⁵ Not least in part because the FIFA rules for the 2010 and 2014 World Cups were strictly for African and South American countries to apply to, as part of a short-lived rotation policy. Ryan Gauthier, ‘International Sporting Event Bid Processes, and How They Can be Improved’ (2011) 11 *The International Sports Law Journal* 3, 6.

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This section has provided an overview of *what* is happening in regards to hosting sports mega-events, and *why* it is happening. Namely, sports mega-events, including the Olympic Games, are increasingly being held in emerging market economies. While events will always be held in advanced economies, sometimes simply because they are a “safe pair of hands”, to use the language of the Tokyo 2020 Summer Olympic Games bid,⁵⁶ the share of events held in emerging market economies will certainly be larger than in the past. There is an increased demand, or ‘pull’, from the emerging market economies, and an increased willingness, or ‘push’, on the part of the international sporting organisations to have these cities and countries play host to their events. However, one of the reasons that international sporting bodies like to have their events take place in emerging market economies, a weaker rule of law, may prove problematic in regards to the concerns addressed at the beginning of this chapter, namely the violation of human rights.

3.4. (Un-) Accountability of Emerging Market Economies and the IOC

A major concern with hosting the Olympic Games and other sports mega-events in emerging market economies is the increased risk of the worst outcomes of the Olympic Games. These outcomes are likely to be prevented, or at least mitigated, by states that are accountable to their population. If states are unaccountable to their people, the state is less likely to provide protection or redress to, or may even be more willing to engage in practices that actively harm, their citizens.

To examine a difference in accountability between advanced and emerging market economies, I will use several indicators of accountability that have been compiled by IOs and NGOs. The particular indicators that will be used here are the World Bank’s 2013 Worldwide Governance Indicators (‘WGI’), the Economist Intelligence Unit’s 2014 ‘Democracy Index’, and Transparency International’s 2014 Corruption Perceptions Index. Using indicators to measure a concept such as accountability allows for a simple

⁵⁶ Jeré Longman and Martin Fackler, ‘Tokyo is Choice for 2020’ *New York Times* (New York, 8 September 2013) SP1. Japanese IOC member Tsunekazu Takeda stated that “Tokyo 2020 is the safe pair of hands that can be trusted to deliver superb Games in these uncertain times.” Tokyo 2020, ‘Tokyo 2020 emphasises its global vision for the benefit of sport and the Olympic Movement Prime Minister Abe confirms he will lead bid delegation to IOC Host City’ (*Tokyo2020*, 23 August 2013) <<http://www.tokyo2020.jp/en/news/index.php?mode=page&id=955>> accessed 09 June 2015.

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comparison across countries, although at the cost of losing individual specificity and context.⁵⁷ Certainly, the above indices are not perfect measurements,⁵⁸ but are a useful ‘quick-look’ at the situation in the various host countries.

To measure the difference between countries, I shall focus on hosts of the Olympic Games from 2010–2022. There are seven advanced economies: Canada, Japan, Norway, the Republic of Korea, the United Kingdom, Switzerland, and Singapore. Many of these countries had a long history of hosting the Olympic Games, and other sports mega-events, with Singapore being the sole exception. Four emerging market economies have also recently hosted, or are scheduled to host, various Olympic Games: Argentina, Brazil, China, and Russia. Of these countries, only Russia arguably has a recent history of hosting sports mega-events, with the remainder of these countries new to the scene.

The WGI measures states’ performance in particular areas of governance, creating their indicators from a thirty-two different courses, ranging from commercial information providers, to surveys of firms and households, to data from NGOs and public sector organisations.⁵⁹ The WGIs then provide a weighted index, and a percentile ranking, with ‘100’ granted to the top state performance in the category, and ‘0’ awarded to the lowest-performing state. Six categories are measured by the WGIs, ‘Voice and Accountability’, ‘Political Stability and Absence of Violence’, ‘Government Effectiveness’, ‘Regulatory Quality’, ‘Rule of Law’, and ‘Control of Corruption’. To measure the difference between the groups of states, I am using the averages of each group.

The first examined category, ‘Voice and Accountability’, measures freedom of expression, association, and the media. This particular category has been criticized for not measuring accountability at all, despite the effect freedom of the press has on holding governments accountable. In this category, the advanced economies average a percentile ranking of 84.56, while the emerging market economies average 34.84. In the second category of ‘Political Stability and Absence of Violence’, advanced economies average

⁵⁷ Sally Engle Merry, ‘Measuring the World: Indicators, Human Rights, and Global Governance’ (2011) 52 *Current Anthropology* S83, S86.

⁵⁸ The WGI have been criticized for insufficiently defining the variables being measured (i.e., questionable “construct validity”) M.A. Thomas, ‘What Do the WorldWide Governance Indicators Measure?’ (2010) 22 *European Journal of Development Research* 31.

⁵⁹ World Bank, Worldwide Governance Indicators, <<http://info.worldbank.org/governance/wgi/index.aspx#doc-sources>> accessed 09 June 2015.

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81.92, while emerging market economies average 33.77. The third category of ‘Government Effectiveness’ measures the quality of public services and the civil service, and sees advanced economies averaging 94.05, and emerging market economies averaging 48.21. The fourth category of ‘Regulatory Quality’, which measures the ability of the government to form and implement policies that promote private sector development, sees advanced economies average 91.93, and emerging market economies average 38.04. The fifth index, ‘Rule of Law’, measures the confidence in actors abiding by the rules of society and enforcement of rights. In this index, advanced economies averaged 92.55 to the emerging market economies’ 36.26. Finally, in the index of ‘Control of Corruption’, advanced economies averaged a score of 92.07, while emerging market economies averaged 39.83.

The Transparency International Corruption Perceptions index follows a similar pattern to the World Bank indicators. The Transparency International measures how corrupt a country’s public sector is perceived to be, using a scale of 0–100 (with ‘0’ representing a perception of high corruption, and ‘100’ representing a perception of low corruption).⁶⁰ The six advanced economies had an average score of 77. The scores ranged from 55 (Republic of Korea) to 86 (Norway), with all but the Republic of Korea in a narrow band of scores from 76–86. The five emerging market economies averaged a score of 35, ranging from 27 (Russia) to 43 (Brazil).

The Economist Intelligence Unit puts out an annual ‘Democracy Index’ based on answers to questions by various, undefined, experts. The index measures countries on a scale of 1–10, with various bands of scores representing various regimes: authoritarian (0–3.9), hybrid (4.0–5.9), flawed democracy (6.0–7.9), and full democracy (8.0–10).⁶¹ Five of the six advanced economies are considered to be full democracies, with Singapore being at the bottom end of the ‘flawed democracy’ category. The emerging market economies included flawed democracies in Argentina and Brazil, and authoritarian regimes in China and Russia.

⁶⁰ Transparency International, Corruption Perceptions Index 2014: Results, <<http://www.transparency.org/cpi2014/results>> accessed 6 August 2015.

⁶¹ The Economist Intelligence Unit, ‘Democracy Index 2014: Democracy and its Discontents’ (2015) <<http://www.sudestada.com.uy/Content/Articles/421a313a-d58f-462e-9b24-2504a37f6b56/Democracy-index-2014.pdf>> accessed 6 August 2015.

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Fig. 6 – Indices for Countries Hosting the Olympic Games

| Indices for Advanced Economies Selected as Hosts for Olympic Games 2010–2022 | | | | |
|---|---------------------------------|---|---------------------------------|---------------------------|
| Host Country | Voice and Accountability | Political Stability /Absence of Violence | Government Effectiveness | Regulatory Quality |
| Canada | 95.26 | 83.89 | 97.13 | 95.22 |
| Japan | 85.31 | 81.52 | 93.78 | 83.25 |
| Norway | 100 | 94.79 | 98.09 | 94.74 |
| Republic of Korea | 68.25 | 56.87 | 82.30 | 79.90 |
| Singapore | 52.13 | 95.73 | 99.52 | 100 |
| Switzerland | 98.58 | 97.63 | 97.61 | 94.26 |
| United Kingdom | 92.42 | 63.03 | 89.95 | 96.17 |

| Host Country | Rule of Law | Control of Corruption | TI Corruption Perceptions | EIU Democracy Index |
|---------------------|--------------------|------------------------------|----------------------------------|----------------------------|
| Canada | 94.79 | 95.22 | 81 | 9.08 |
| Japan | 89.57 | 92.82 | 76 | 8.08 |
| Norway | 100 | 98.56 | 86 | 9.93 |
| Republic of Korea | 78.67 | 70.33 | 55 | 8.06 |
| Singapore | 95.26 | 96.65 | 84 | 6.03 |
| Switzerland | 96.68 | 97.61 | 86 | 9.09 |
| United Kingdom | 92.89 | 93.30 | 78 | 8.31 |

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Indices for Emerging Market Economies Selected as Hosts for Olympic Games 2010–2022

| Host Country | Voice and Accountability | Political Stability /Absence of Violence | Government Effectiveness | Regulatory Quality |
|---------------------|---------------------------------|---|---------------------------------|---------------------------|
| Argentina | 56.40 | 48.82 | 44.50 | 17.70 |
| Brazil | 58.77 | 36.97 | 51.20 | 54.55 |
| China | 5.21 | 27.01 | 54.07 | 42.58 |
| Russia | 18.96 | 22.27 | 43.06 | 37.32 |

| Host Country | Rule of Law | Control of Corruption | TI Corruption Perceptions | EIU Democracy Index |
|---------------------|--------------------|------------------------------|----------------------------------|----------------------------|
| Argentina | 28.44 | 40.67 | 34 | 6.84 |
| Brazil | 52.13 | 55.02 | 43 | 7.38 |
| China | 39.81 | 46.89 | 36 | 3.00 |
| Russia | 24.64 | 16.75 | 27 | 3.39 |

The above indices suggest that emerging market economies are significantly less accountable to their citizens than advanced economies. This does not mean that advanced economies are incapable of being accountable, particularly for a single project such as the Olympic Games. However, it does suggest that an emerging market economy's government is less likely to be accountable in regards to planning and in addressing problems caused by the Games.

4. The Worst Outcomes of the Olympic Games

Chapter Two discussed the requirement of minimal moral responsibility as a component of legitimacy. This Part will examine the worst outcomes of the Olympic Games, to what extent they constitute shortcomings in the IOCs fulfilment of its minimal moral

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responsibility, and as such, undermine its legitimacy. The particular worst outcomes to be examined here are: violations of labour rights, forced evictions, and environmental damage. Economic and social legacies will also be examined. Other outcomes, of the Olympic Games, such as repression of civil rights (e.g., freedom of expression), or poor treatment of aboriginal persons is arguably more of a background problem of a state, although it may be exacerbated by the Olympic Games. Excellent work has been done on these issues, and I will not attempt to improve on their efforts, here.⁶²

In setting out standards of minimal moral responsibility, I will use the three instruments that comprise the ‘international bill of rights’, the Universal Declaration of Human Rights,⁶³ the International Covenant on Civil and Political Rights,⁶⁴ and the International Covenant on Economic, Social and Cultural Rights.⁶⁵ In addition, as mentioned earlier in this chapter, I will also discuss the ILO’s Declaration on the Fundamental Principles and Rights at Work. The UDHR is considered to be a foundational document for international human rights, while the Covenants are globally-reaching, each with over 160 states parties. Notable exceptions from the ICCPR are China (host of the 2008 Summer Olympics, and 2014 Youth Olympics; bidder for the 2022 Winter Olympics), Indonesia (abandoned a 2022 FIFA World Cup bid), and Qatar (host of the 2022 FIFA World Cup; bidder for the 2016, 2020 Summer Olympics), while the notable exception from the ICESCR is the United States (bidder for the 2012, 2016, 2024 Summer Olympics; bidder for 2022 FIFA World Cup).

⁶² For impacts on civil society, see Richard Giulianotti and Francisco Klauser, ‘Security Governance and Sport Mega-Events: Toward an Interdisciplinary Research Agenda’ (2010) 34 *Journal on Sport and Social Issues* 49, 53–56; Helen Jefferson Lenskyj, ‘The Olympic Industry and Civil Liberties: The Threat to Free Speech and Freedom of Assembly’ (2004) 7 *Sport in Society* 370, 380–81. For impacts on aboriginal communities, see Brett Neilson, ‘Bodies of Protest: Performing Citizenship at the 2000 Olympic Games’ (2002) 16 *Continuum: Journal of Media & Cultural Studies* 13; Christine M. O’Bonsawin, ‘“No Olympics on Stolen Native Land”: Contesting Olympic Narratives and Asserting Indigenous Rights Within the Discourse of the 2010 Vancouver Games’ in Russell Field and Bruce Kidd (eds) *Forty Years of Sport and Social Change, 1968-2008* (Routledge 2011).

⁶³ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) (‘UDHR’).

⁶⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (‘ICCPR’).

⁶⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (‘ICESCR’).

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4.1. Violations of Labour Rights

Protections for labourers have been a central component of international human rights law for almost a century. The ILO adopted the Forced Labour Convention in 1930.⁶⁶ The Convention was adopted partially in response to the use of forced labour by colonial governments to construct public works.⁶⁷ The ILO currently focuses its efforts on four ‘core’ labour rights: freedom of association and collective bargaining, prohibition of discrimination, prohibition of child labour, and prohibition of forced labour.⁶⁸ These rights are supported by various ILO Conventions. The ILO has communicated that even if states are not parties to the relevant conventions, their membership in the ILO alone requires them to respect these rights.⁶⁹ These core labour rights find ample support in the UDHR, ICESCR, and ICCPR.⁷⁰ The ICESCR sets out further rights: the right to rest, leisure, and limits on working hours; as well as healthy and safe working conditions.⁷¹

In 2009, the IOC pledged to intervene in the event of “abuse of migrant workers at Olympic venue construction sites,” and in instances of child labour.⁷² Since the bidding for the 2016 Games, the IOC has asked hosts to ensure that sourcing of licenced products take into consideration labour rights.⁷³ Following Agenda 2020, the IOC has required hosts to comply with national labour laws and international labour standards.

Construction workers who work on Olympic Games’ projects have worked long hours to complete preparations. During preparations for the Beijing Olympics, reports arose that workers laboured for an average of ten hours per day, with three days off per month.⁷⁴ Other workers reported seventeen-hour workdays.⁷⁵ Prior to the Sochi Olympics, workers

⁶⁶ ILO Forced Labour Convention, 1930 (No. 29) art. 2.1, June 28, 1930, 39 UNTS 55.

⁶⁷ International Labour Organization, Special Action Programme to Combat Forced Labour, *Forced Labour and Human Trafficking Casebook of Court Decisions* (International Labour Organization 2009) 1.

⁶⁸ International Labour Organisation, ILO Declaration on Fundamental Principles and Rights at Work, June 1998, 37 I.L.M. 1237 (1998), preamble.

⁶⁹ *ibid* art 2.

⁷⁰ Freedom of association, UDHR, art. 23(4); ICCPR, art. 22; ICESCR, art. 8; prohibition of discrimination, UDHR, art. 23(2); ICCPR, art. 26; ICESCR, art. 2; ban on forced labour, ICCPR, art. 8.

⁷¹ ICESCR, art. 7.

⁷² International Olympic Committee, *XIII Olympic Congress: Copenhagen – Follow-Up* (2011) 33.

⁷³ International Olympic Committee, 2016 Candidature Acceptance Procedure (2007) 130.

⁷⁴ Human Rights Watch, *One Year of My Blood* (2008) 25.

⁷⁵ Geoffrey York, ‘Migrant Workers Feel Like ‘Slaves’ to Beijing’s Olympic Projects’ *Globeandmail* (12 March 2008) <<http://v1.theglobeandmail.com/servlet/story/RTGAM.20080312.wchina12/front/Front/Front/>> accessed 30 June 2015.

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were reportedly on the job for twelve hours per day with an hour off for meals and for changing in-and-out of work clothes. Days off were had only once every two weeks or so.⁷⁶ It is possible that even these minimal concessions were eliminated as the rush to finish Sochi's venues on time increased in the months leading up to the Games.⁷⁷ Health and safety in working conditions has also been an issue, as it has been alleged that sixty workers died in the preparations for the Sochi Winter Games.⁷⁸

Migrant workers in particular have laboured in poor conditions. So many migrant workers are employed in construction for sports mega-events, it is reasonable to suggest that without migrant workers, the Games could simply not take place.⁷⁹ Unfortunately, their importance does not grant them any positive status. Chinese internal migrant workers were often unable to join the All-China Federation of Trade Unions, the only union in China.⁸⁰ In Sochi, around 16,000 workers (about 20% of the workforce) were not Russian nationals. These workers reported earning between US\$455 and US\$605 per month—above Russia's minimum wage, but below the average Russian construction worker's wage.⁸¹ Employers reportedly withheld work permits and passports and threatened denunciation of workers and absconders to Russia's Federal Migration Service.⁸² Denunciation would lead to detention, deportation, and a ban on returning to Russia for several years.⁸³ In the months before the Olympic Games, the Russian state detained

⁷⁶ Human Rights Watch, *Race to the Bottom* (n 4) 4–5.

⁷⁷ See, e.g., David Segal, 'First Event of Sochi Olympics: The Hotel Construction Sprint' *New York Times* (New York, 4 February 2014) A1.

⁷⁸ Christopher Ingraham, 'The Human Toll of FIFA's Corruption' *The Washington Post* (Washington, 27 May 2015) <<http://www.washingtonpost.com/blogs/wonkblog/wp/2015/05/27/a-body-count-in-qatar-illustrates-the-consequences-of-fifa-corruption/>> accessed 09 June 2015. However, some journalists estimate the number to be in the hundreds. Craig Shaw, Lina Vdovii, Roman Anin, 'Ghosts of Sochi' (*The Black Sea*, 10 December 2014) <<http://theblacksea.eu/index.php?idT=88&idC=88&idRec=1184&recType=story>> accessed 09 June 2015.

⁷⁹ *International Labour Organisation International Labour Conference: Provisional Record 8 (Rev.)*, 101st Session 47 (2012) (statement of Albert Emilio (Ambet) Yuson, Representative, Building and Wood Workers' International).

⁸⁰ Human Rights Watch, *One Year of My Blood* (n 74) 42.

⁸¹ Human Rights Watch, *Race to the Bottom: Exploitation of Migrant Workers Ahead of Russia's 2014 Winter Olympic Games in Sochi* (2013) 4, 22.

⁸² *ibid* 4–5.

⁸³ *ibid* 44; 'Russia: Sochi Migrant Workers Targeted for Expulsion' (*Human Rights Watch*, 2 October 2003) <<https://www.hrw.org/news/2013/10/02/russia-sochi-migrant-workers-targeted-expulsion>> accessed 16 July 2015.

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workers who sought to complain to the state about their conditions, and started deporting migrant workers in earnest in September 2013.⁸⁴

The above conditions violate various human rights standards, including freedom of association, prohibition on discrimination, and forced labour. Forced labour is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁸⁵ The actions of withholding of wages to prevent abscondment, withholding of work visas and identity documents, and threats of denunciation to state authorities constitute the “menace of penalty” required to establish a finding of forced labour.

A finding of forced labour, particularly of migrant workers, also supports a finding of human trafficking. Forced labour is considered a *prima facie* indicator of human trafficking under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*.⁸⁶ The initial consent of a person is deemed irrelevant when exploitation occurs. Thus, even if workers willingly went to work on Olympic sites, once exploitative conditions arise, the question of human trafficking does as well. Although some human trafficking occurs for reasons of sexual exploitation, there seems to be very little evidence of hosting a sports mega-event leading to an increase in trafficking for sexual exploitation.⁸⁷

⁸⁴ ‘Russia: Sochi Migrant Workers Targeted for Expulsion’ (n 83); Hannah Levintova and Valerie Hopkins, ‘Meet the Olympic Workers Still Waiting for Payday’ (*Motherjones*, 23 February 2014) <<http://www.motherjones.com/politics/2014/02/sochi-olympics-russia-migrant-workers-deportation>> accessed 16 July 2015.

⁸⁵ ILO Forced Labour Convention (n 66).

⁸⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 12 November 2000 UNGA Res 55/25, entered into force 25 December 2003) 2237 UNTS 319, art 3(a).

⁸⁷ Sports mega-events see maybe a few incidents of trafficking in women that is brought about by the event. Global Alliance Against Traffic in Women, ‘What is the Cost of a Rumour?: A Guide to Sorting out the Myths and Facts About Sporting Events and Trafficking’ (2011); Victoria Hayes, ‘Human Trafficking for Sexual Exploitation at World Sporting Events’ (2010) 85 *Chicago-Kent Law Review* 1105, 1108; Chandre Gould, ‘Moral Panic, Human Trafficking and the 2010 Soccer World Cup’ (2010) 24 *Agenda: Empowering Women for Gender Equality* 31; Katherine L. Morrow, ‘Soccer, Sex, and Slavery: Human Trafficking in the World Cup’ (2008—2009) 17 *Tulane Journal of International and Comparative Law* 243; Anne Marie Tavella, ‘Sex Trafficking and the 2006 World Cup in Germany: Concerns, Actions and Implications for Future International Sporting Events’ (2007—2008) 6 *Northwestern University Journal of International Human Rights* 196. This situation has led some who call for more to be done in regards to trafficking in women and sporting events to ignore whether or not trafficking is increased, and turn to perceptions of trafficking. Catherine M Matheson and Rebecca Finkel, ‘Sex Trafficking and the Vancouver Winter Olympic Games: Perceptions and Preventative Measures’ (2013) 36 *Tourism Management* 613, 614.

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The above situation is also compounded by unreliable employment statistics in regards to sports mega-events. Employment figures often do not differentiate between the types of jobs (e.g., construction, tourism, support), or whether the jobs were created directly or indirectly as a result of the event.⁸⁸ It is also unclear whether employment figures are total individuals employed, or individuals employed at one time. Also unclear is whether the figures simply count people, or count person-years. Yet, regardless of the method, the numbers of workers employed on projects for the Olympic Games are significant. It is estimated that in preparation for the Sydney Olympic Games, over 40,000 workers were employed on construction projects overseen by the Olympic Coordination Authority.⁸⁹ The province of British Columbia saw 38,530–51,510 jobs created or supported by the Games.⁹⁰ Prior to the London Games, in September 2010, 10,333 were employed on projects at that time for the Olympic Delivery Authority.⁹¹ In preparations for the Beijing Games, 300,000 internal (i.e., Chinese) migrant workers were employed.⁹² As mentioned in the introduction, an estimated 90,000 worked on the venues for the Sochi Olympic Games.

4.2. Forced Evictions

The UDHR recognises a right to “own property alone as well as in association with others”, and prohibits the arbitrary deprivation of property.⁹³ The UDHR and ICESCR also recognise a right to an adequate standard of living,⁹⁴ which has been read by the ICESCR Committee to include a right against forced evictions.⁹⁵ If an eviction is to occur, then

⁸⁸ Mary Smith, ‘When the Games Come to Town: Host Cities and the Local Impacts of the Olympics’ (2008) London East Research Institute Working Papers 21, 22 <<http://www.gamesmonitor.org.uk/files/When-the-Games-Come-to-Town-M-Smith-2008.pdf>> accessed 02 June 2015.

⁸⁹ European Institute for Construction Labour Research, ‘Olympic Sites: A Celebration of Olympic Values?’ (2011) 25.

⁹⁰ University of British Columbia, *Olympic Games Impact (OGI) Study for the 2010 Olympic and Paralympic Winter Games: Post-Games Report* (Oct. 23, 2013) 16.

⁹¹ European Institute for Construction Labour Research (n 89) 45.

⁹² *ibid* 39.

⁹³ UDHR, art. 17.

⁹⁴ UDHR, art. 25; ICESCR, art. 11.

⁹⁵ UN Committee on Economic, Social and Cultural Rights (‘UNCESCR’), *General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions*, 20 May 1997, E/1998/2; UNCESCR, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23.

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rights to information and participation by those who are affected arise.⁹⁶ Finally, when an eviction does take place, a right to compensation and adequate resettlement attaches.⁹⁷

Similar to forced labour, the IOC pledged in 2009 to intervene with the OCOG in situations where people who were displaced due to Olympic venue construction were mistreated.⁹⁸ Post-Agenda 2020, the host selection questionnaire requires the bid committee to identify projects that may require displacement of existing communities and to confirm that the procedures applied will conform to national and/or international standards.⁹⁹

Thousands of people are relocated due to the Olympic Games, at times forcibly.¹⁰⁰ In Beijing, one NGO estimated that 1.25 million people would be evicted due to Olympic-related projects.¹⁰¹ More recently, around 2,000 families were displaced prior to the Sochi Olympics.¹⁰² In Rio de Janeiro, thousands of families have been moved out of favelas, with the Olympic Games and FIFA World Cup as a rationale.¹⁰³ Sometimes compensation or other assistance has been provided, sometimes not. Shortly after Tokyo was selected as the host of the 2020 Summer Olympics, one report of possible displacement involved a shopkeeper who was displaced for the 1968 Tokyo Summer Olympics, and who may be displaced again for the 2020 Tokyo Summer Olympics.¹⁰⁴

⁹⁶ UNCESCR, *General Comment No. 7* (n 95) para. 15.

⁹⁷ *ibid* para. 13.

⁹⁸ *XIII Olympic Congress: Copenhagen – Follow-Up* (n 72) 33.

⁹⁹ International Olympic Committee, 2022 Candidature Procedure and Questionnaire: XXIV Olympic Winter Games (2014) 80 (2022 Candidature Procedure).

¹⁰⁰ Centre of Housing Rights and Evictions, *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights* (2007).

¹⁰¹ *ibid* 154.

¹⁰² Richard Boudreaux, 'Sochi Olympic Preparations Strain City' (*The Wall Street Journal*, 12 August 2012) <<http://www.wsj.com/articles/SB10000872396390443537404577581720012865912>> accessed 09 June 2015.

¹⁰³ See, Dave Zirin, *Brazil's Dance with the Devil: The World Cup, the Olympics, and the Fight for Democracy* (Kindle edn, Haymarket 2014) ch 7; Jonathan Watts, 'Forced Evictions in Rio Favela for 2016 Olympics Trigger Violent Clashes' *The Guardian* (London, 3 June 2015) <<http://www.theguardian.com/world/2015/jun/03/forced-evictions-vila-autodromo-rio-olympics-protests>> accessed 17 July 2015; Jonathan Watts, 'Favela Residents Protest Forced Olympic Relocation by Blocking Rio Roadway' *The Guardian* (London, 1 April 2015) <<http://www.theguardian.com/world/2015/apr/01/rio-olympics-protest-vila-autodromo-relocation>> accessed 17 July 2015.

¹⁰⁴ Shigemi Sato, 'Two-Time Evictee Bears Olympic-Size Grudge' (*Japan Times*, 15 September 2013) <<http://www.japantimes.co.jp/news/2013/09/15/national/two-time-evictee-bears-olympic-size-grudge>> accessed 09 June 2015.

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4.3. Environmental Damage

A right to a clean/healthy environment is not generally accepted as a *per se* human right to date. It is certainly not in the UDHR, ICCPR, or ICESCR. Instead, a right to a clean environment is often substantiated by reference to other rights, such as the right to health, property, water, and private life.¹⁰⁵ The *Draft Articles on the Responsibility of International Organizations* would presumably include international environmental obligations under the requirement to adhere to ‘international law’. The Ruggie Principles indirectly suggest that environmental laws may be a component of a more generalized human rights regime.¹⁰⁶ Taking a narrow view of the IOC’s minimum moral responsibility (referring to obligations in the UDHR, ICCPR, and ICESCR), environmental protection may not be an element. However, both the *Draft Articles* and the Ruggie Principles suggest a place for environmental protection. Given the context of the Olympic Games, which have a high potential to create negative environmental impacts through constructing Games-related infrastructure, environmental protection should be considered to be a component of minimum moral responsibility. Regardless of the status of environment as an element of minimum moral responsibility, given the importance the IOC ascribes to environmental sustainability, it is part of the IOC’s institutional integrity.

The IOC emphasizes environmental sustainability regarding the Games. The environment is one of the ‘Three Pillars’ of the Olympic Movement, alongside sport and culture.¹⁰⁷ The Olympic Charter sets out raising awareness of environmental issues and promoting sustainable development in sport (and the Olympic Games) as a mission of the IOC.¹⁰⁸ The IOC maintains a Sport and Environment Commission, and cooperates with the UN Environment Programme.¹⁰⁹ Finally, the IOC has abundant documentation regarding

¹⁰⁵ Alan Boyle, ‘Human Rights and the Environment: Where Next?’ (2012) 23 *The European Journal of International Law* 613, 614, 617–19. *See also* UNDR, art. 25(1).

¹⁰⁶ Ruggie Principles (n 9) 5.

¹⁰⁷ International Olympic Committee, Commission for Sport and Environment, ‘Olympic Movement’s Agenda 21: Sport for Sustainable Development’ (1999) 53 (‘IOC Agenda 21’); Hart Cantelon and Michael Letters, ‘The Making of the IOC Environmental Policy as the Third Dimension of the Olympic Movement’ (2000) 35 *International Review for the Sociology of Sport* 294, 295.

¹⁰⁸ Olympic Charter (n 16) Rule 2.13.

¹⁰⁹ United Nations Environment Programme, ‘Sport and the Environment’ (UNEP) <http://www.unep.org/sport_env/about.aspx> accessed 17 July 2015.

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sport and the environment,¹¹⁰ requires hosts to undertake environmental impact analyses, and has required bidding cities for the 2022 Winter Olympics to discuss carbon emission minimization.¹¹¹

Why is the IOC so interested in the environment as opposed to labour rights and evictions? In 1992, two events pushed the IOC into at least showing a concern for the environment: the Albertville Winter Olympic Games, and the Rio Declaration.¹¹² The Albertville Games are widely considered to be an ecological disaster, where considerable damage was done to the plant and animal habitats and to the Alpine wilderness.¹¹³ The manner in which the ski runs were created also led to an increase in avalanche risk for the region.¹¹⁴ Later that year, the UN held its Conference on Environment and Development, which resulted in the Rio Declaration, which states, *inter alia*, that “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”¹¹⁵ Thus, sustainable development and environmental protection were at the forefront of global politics at the time. Two years following Albertville and the Rio Declaration, Lillehammer, Norway, hosted the 1994 Winter Olympic Games.¹¹⁶ The Lillehammer OCOG was sensitive to the environment, at least in part due to Norwegian President Gro Harlem Brundtland’s focus on environmental concerns and her position as chair of the United Nations World Commission on the Environment and Development.¹¹⁷ As a result the Lillehammer Games were carried out in an environmentally sensitive manner, setting a template for an environmentally-sustainable Games.¹¹⁸

Despite the importance that the IOC has placed upon environmental sustainability, environmental problems remain a part of the Games. Although the 2000 Sydney Games

¹¹⁰ E.g., IOC Agenda 21 (n 107); International Olympic Committee, Commission for Sport and Environment, ‘Sustainability Through Sport: Implementing the Olympic Movement’s Agenda 21 – 2012’ (2012).

¹¹¹ 2022 Candidature Procedure (n 99) 81.

¹¹² For a discussion of the Albertville Games, see Cantelon and Letters (n 107) 299–302.

¹¹³ Shalini Samuel and Wendy Stubbs, ‘Green Olympics, Green Legacies? An Exploration of the Environmental Legacies of the Olympic Games’ (2012) 48 *International Review for the Sociology of Sport* 485, 487.

¹¹⁴ Cantelon and Letters (n 107) 301.

¹¹⁵ 1992 Rio Declaration on Environment and Development (1992), UN Doc. A/Conf.151/26 (vol. I)/31 ILM 874 (1992) Principle 4.

¹¹⁶ As of 1994, the Summer and Winter Olympic Games were no longer held in the same year, but instead in were held two years apart.

¹¹⁷ Cantelon and Letters (n 107) 303.

¹¹⁸ *ibid* 302–03.

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were the first Summer Olympics to take environmental sustainability into account, the government exempted Games-related projects from environmental impact assessments.¹¹⁹ In Sochi, landslides triggered by construction ended up destroying homes,¹²⁰ while run-off from construction has made drinking water unsafe. Locals also now refuse to swim in the waters of Sochi due to pollution.¹²¹ Venue construction also negatively impacted 8,000 acres of Sochi National Park, a UNESCO World Heritage site, with wetlands being buried under rubble, and animal life being severely impacted.¹²² Rio has faced concerns over the construction of a golf course on land that had been part of a nature reserve. Although public prosecutors attempted to have the construction halted, the court dismissed the claim, saying that by “changing one of the holes, the course developers had done enough to preserve the local vegetation.”¹²³ However, great strides have been made in other areas, such as attempts to reduce the carbon footprint of the Games.¹²⁴

4.4. Economic and Social Legacies of the Games

The legacies of the Olympic Games are uneven, at best. Some cities that have hosted the Games have seen positive legacies. For instance, Barcelona saw a revitalization of its seaside district. However, economist Andrew Zimbalist explains that many factors

¹¹⁹ Pietro Caratti and Ludovico Ferraguto, ‘The Role of Environmental Issues in Mega-Events Planning and Management Processes: Which Factors Count?’ in Graeme Hayes and John Karamichas (eds), *Olympic Games, Mega-Events and Civil Societies: Globalization, Environment, Resistance* (Palgrave Macmillan 2012) 115.

¹²⁰ Boudreaux (n 102).

¹²¹ Alec Luhn, ‘Locals Count Toxic Cost of Sochi Games: Builders are Dumping Waste, Polluting Rivers and Cutting Off Villages Ahead of Winter Olympics’ *The Independent* (London, 1 December 2013) <<http://www.independent.co.uk/news/world/europe/locals-count-toxic-cost-of-sochi-games-builders-are-dumping-waste-polluting-rivers-and-cutting-off-villages-ahead-of-winter-olympics-8975115.html>> accessed 14 July 2015.

¹²² Lindsay Abrams, ‘The Sochi Scandal No One’s Talking About: How Russia is Silencing its Environmentalists’ (*Salon*, 9 February 2014) <http://www.salon.com/2014/02/09/the_sochi_scandal_no_ones_talking_about_how_russia_is_silencing_its_environmentalists/> accessed 24 July 2015.

¹²³ Daniel Etchells, ‘Brazilian Judge Rejects Request to Halt Rio 2016 Olympic Golf Course Construction’ (*InsidetheGames*, 29 November 2014) <<http://www.insidethegames.biz/articles/1024089/brazilian-judge-rejects-request-to-halt-rio-2016-olympic-golf-course-construction>> accessed 7 July 2015.

¹²⁴ ‘Rio 2016 Announces Plans to Reduce Carbon Footprint of Olympic and Paralympic Games’ (*Rio 2016*, 30 October 2016) <<http://www.rio2016.com/en/news/news/rio-2016-announces-plans-to-reduce-carbon-footprint-of-olympic-and-paralympic-games>> accessed 16 July 2015.

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contributed to Barcelona's fortunes, including geography, Spain entering the EU, and a competent civic authority.¹²⁵

More often, cities are left with a plethora of negative legacies that far outweigh the few positive benefits. Sporting facilities built for the Games often become 'white elephants', under-used, or unused, after the Games.¹²⁶ Public spending for the Games may create a debt that takes years to pay off, while the facilities cost millions more in on-going upkeep.¹²⁷ Economists have provided mounting evidence that the local economy is not improved by hosting a sports mega-event, but is often harmed.¹²⁸ Jobs that are created are short-term and low-paying (e.g., security guards, ticket-takers, ushers, concessions workers).¹²⁹ Investment in other infrastructure may be crowded out by investment by the event infrastructure, and the problem is compounded with the inflated infrastructure costs caused by the need to finish building the venues on time.¹³⁰ Naturally, this leads to concerns over the high costs of the event, which is often borne, at least in part, by taxpayers.¹³¹ Even the hoped-for tourists may stay away from the city out of fear of high prices, tight security, and potential crowds generated by a sports mega-event.¹³²

¹²⁵ Andrew Zimbalist, *Circus Maximus: The Economic Gamble Behind Hosting the Olympics and the World Cup* (Kindle edn, Brookings Institution Press 2015) ch 5.

¹²⁶ *ibid* ch 4, loc 1161.

¹²⁷ *ibid*.

¹²⁸ For an overview of the argument by economists that subsidies for sports facilities provide no significant economic benefit, see Dennis Coates and Brad R. Humphreys, 'Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?' (2008) 5 *Econ Journal Watch* 294. *See also, e.g.*, Binyamin Appelbaum, 'If You Build It...' *New York Times Magazine* (Aug. 10, 2014) MM14; Sefan Késenne, 'Popular Deception by IOC and FIFA' in Barbara Segaert and others (eds), *Sports Governance, Development and Corporate Responsibility* (Routledge 2012).

¹²⁹ Smith (n 88) 19; Malfas, et al (n 31) 212. There is a current debate over how to evaluate the employment impacts of the Olympic Games, using data from the 1996 Atlanta Olympic Games. One set of Atlanta-based authors have found a significant employment impact on the part of the Atlanta Games, with an increase in over 300,000 jobs. Julie L. Hotchkiss, Robert E. Moore and Stephanie M. Zobay, 'Impact of the 1996 Summer Olympic Games on Employment and Wages in Georgia' (2003) 69 *Southern Economic Journal* 691; Julie L. Hotchkiss, Robert E. Moore and Fernando Rios-Avila, 'Reevaluation of the Employment Impact of the 1996 Summer Olympic Games' (2015) 81 *Southern Economic Journal* 619. The other major study has found a significant employment increase of 29,000 jobs, but that these are short-term, and concentrated in the arts, entertainment, accommodation, food services, and retail sectors. Arne Feddersen and Wolfgang Maennig, 'Mega-Events and Sectoral Employment: The Case of the 1996 Olympic Games' (2013) 31 *Contemporary Economic Policy* 580.

¹³⁰ Holger Preuss, 'The Conceptualisation and Measurement of Mega Sport Event Legacies' (2007) 12 *Journal of Sports and Tourism* 207, 209, 219.

¹³¹ Even the Sochi Games, which were initially significantly privately-financed, have seen the private investors unload billions of dollars of assets onto the Russian government. Nataliya Vasilyeva, 'Russian Taxpayers on the Hook as Oligarchs Unload Sochi Olympics Assets' (*CTV News*, 5 February 2015)

5. Conclusion: Substantive Failures of the Olympic Games

This chapter has examined the substantive legitimacy of the IOC and the Olympic Games. These institutions fall short in both meeting standards of minimum moral responsibility, and of institutional integrity. When it comes to adhering to a minimum moral responsibility, preparations to host the Olympic Games have led to violations of multiple articles of the UDHR, ICCPR, ICESCR, and other international treaties and conventions. In particular, violations of labour rights, forced evictions, and environmental damage have occurred as a result of hosting the Olympic Games, undermining the minimum moral responsibility obligations of the IOC. The Olympic Games also fall short when it comes to the IOC's institutional integrity. While the Olympic Games are held regularly (the bare minimum standard), they often do not comport with the standards set by the IOC. The IOC requires that the Games be environmentally sustainable, and promises a raft of positive legacies. In practice, the Games are frequently environmentally unsustainable, and often do not deliver positive legacies. These problems are exacerbated when the Olympic Games are held in emerging market economies, who are often unaccountable to their people. In many cases, these outcomes were accompanied by an absence of legislation, or legislation designed to circumvent prior protections in place. This outcome shows the need for increased substantive protections, through legislation and regulation, to protect those at risk.

The IOC is not directly responsible for many of the actions that lead to the worst outcomes of the Games. However, this reality does not free the IOC from any duties. The *Draft Articles on the Responsibility of International Organizations* and the Ruggie Principles recommend that an organisation should be responsible for the actions of its

<<http://www.ctvnews.ca/sports/russian-taxpayers-on-the-hook-as-oligarchs-unload-sochi-olympics-assets-1.2221857>> accessed 7 July 2015.

¹³² Preuss (n 130) 209–10; Michael A. Leeds, 'Do Good Olympics Make Good Neighbours?' (2007) 26 *Contemporary Economic Policy* 460 (showing that skiers who would normally go to Salt Lake City, Utah instead went to neighbouring Colorado during the winter of the 2002 Winter Olympic Games). *See also* James Hall, 'Tourism to the UK Fell During Olympics, Official Figures Show', *The Telegraph* (London, 11 October 2012) <www.telegraph.co.uk/news/uknews/9601588/Tourism-to-the-UK-fell-during-Olympics-official-figures-show.html> accessed 08 April 2015. *But see* Johan Fourie and María Santana-Gallego, 'The Impact of Mega-Sport Events on Tourist Arrivals' (2011) 23 *Tourism Management* 1364 (suggesting that tourism impacts differ by type of event and whether the event is held during peak tourist season, or during the off-season).

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agents. Therefore, the argument that the IOC itself does not engage in the practices described above is not one that absolves the IOC of responsibility for the worst outcomes of the Games. Instead, the IOC has a responsibility to prevent the outcomes from occurring, and to remedy the situation if required. While the IOC has made small attempts to prevent the worst outcomes from occurring in the first place, it seems that it has made few steps towards remedying any of the problems caused by hosting the Games. Perhaps the first time the IOC has been involved in remedying some of the worst outcomes of the Games was on the eve of the 2014 Sochi Games, where the IOC worked to encourage the Russian government to pay \$8.3 million in wage arrears to migrant workers.¹³³ Whether this money is sufficient, or even available to many workers who had left Russia by that point is unclear.

The purpose of this chapter is not to argue that hosting the Games is always a bad decision for cities and states, or that the Olympic Games always bring about human rights abuses. There are a number of sports mega-events that do bring benefits to the hosts, and do so without imposing human rights abuses (although the costs of the events as opposed to the benefits remains debatable). In addition, there is value to hosting sporting events in countries that suffer from an accountability deficit for human rights advocates in those countries. Hosting sports mega-events in emerging market economies can also bring about positive effects. The ‘spotlight effect’ of a large foreign media presence in the country to cover the event can open the regime up to scrutiny, while the event also provides a platform for human rights advocates. In other cases, other benefits may accrue. For instance, the FIFA World Cups in South Africa saw improvements in labour conditions, with workers joining unions,¹³⁴ and using their power to strike for better conditions.¹³⁵

The above analysis is also not an argument that emerging market economies should not be granted the right to host these events based on their human rights records. If the Olympic Games were held only in countries with perfect human rights records, there

¹³³ Human Rights Watch, ‘Russia: IOC Acts on Sochi Abuses’ (*Human Rights Watch*, 12 February 2014) <<http://www.hrw.org/news/2014/02/11/russia-ioc-acts-sochi-abuses>> accessed 09 June 2015.

¹³⁴ Vasco Pedrina, and Joachim Merz, ‘The Trade Union Legacy of the 2010 World Cup: International Solidarity Revitalized’ in Eddie Cottle (ed), *South Africa’s World Cup: A Legacy for Whom?* (KwaZulu-Natal Press 2011) 119.

¹³⁵ Eddie Cottle, ‘Scoring an Own Goal? The Construction Workers’ 2010 World Cup Strike’ in Eddie Cottle (ed), *South Africa’s World Cup: A Legacy for Whom?* (KwaZulu-Natal Press 2011).

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would be very few countries (if any) that would meet the requirements. Although this chapter focused primarily on the recent Games of Beijing, Sochi, and Rio, Vancouver and London did have their problems in coping with some of the worst outcomes of the Games. For instance, the Vancouver Games saw a case where a group of mostly Central-and-South American construction workers on the ‘Canada Line’ mass transit line were found to have been discriminated against in regards of payment of wages and other conditions on the basis of race, colour, ancestry and place of origin.¹³⁶ However, the workers were able to obtain access to a tribunal to assert their rights, and to have them enforced by the state. As such, the significant difference between Vancouver and London as opposed to the others is not economic development *per se*, but is more closely related to the strength of the rule of law. As such, when the worst outcomes of the Games do occur, the state is available to remedy the harm. Part 3.4 revealed that a significant gap in the rule of law and state accountability exists between advanced and emerging market economies that have recently hosted the Games.

The purpose of this chapter then, to paraphrase Olympic scholar John MacAloon, is to highlight the need for the IOC to realise that there is a cost to simply “plonking” the Olympic Games down in states that are undemocratic and unaccountable to those within their borders.¹³⁷ When awarding the Games, precautions should be taken to ensure that human rights are not violated because of the Games. To do that, proper procedures should be put into place to protect the rights of those who may be affected. These procedures are the focus of the next chapter.

¹³⁶ CSWU Local 1611 v. SELI Canada and others (No. 8), 2008 BCHRT 436.

¹³⁷ John J. MacAloon, ‘Scandal and Governance: Inside and Outside the IOC 2000 Commission’ (2011) 14 Sport in Society 292, 308.

Chapter Five

Procedural Legitimacy: The Olympic Games Host Selection Process

1. Introduction

Chapter Four examined the substantive legitimacy of the IOC in regards to the conduct of the Olympic Games, and found shortcomings in regards to the Olympic Games living up to both minimal moral acceptability and institutional integrity. That chapter also argued that when deciding to select cities in emerging market economies as hosts of the Olympic Games, the IOC should know that the risk of human rights abuses is significant. The question raised then, is how does the IOC select the hosts of the Olympic Games, and is there something in the host selection process that could be used to reduce the risks of human rights violations caused by the Olympic Games? This chapter will examine the procedure that the IOC uses to select the hosts of the Olympic Games, and in turn, assess the IOC's procedural legitimacy.

Introduced in Chapter Two, procedural legitimacy is comprised of six elements across two categories: decision-making processes and accountability mechanisms. Under decision-making processes, decisions must be (1) rational, (2) consistent, and (3) impartial. Three particular accountability mechanisms should also be present in some form: (1) transparency, (2) public participation, and (3) review.

In addressing legitimacy, but also beginning an inquiry into accountability, this chapter poses three research questions. First, what is the process used to select the hosts of the Olympic Games, and how has it changed post-Agenda 2020? Second, does the host selection process meet the standards of procedural legitimacy? Third, using the procedural standards set out by global administrative law, how might the host selection process be made more accountable to those who bid to host the Olympic Games, and to those who are likely to be affected by the Olympic Games?

Chapter Five – Procedural Legitimacy and the Host Selection Process

To answer these questions, this chapter will proceed in four additional parts. Part Two will outline the host selection process used by the IOC, using the selection of the 2016 Summer Olympic Games as an example, and will address reforms brought about by Agenda 2020. Part Three will analyse the transparency of and public participation in the host selection process. Part Four will examine potential mechanisms to improve the transparency of and public participation in the host selection process. Part Five will conclude.

2. Host Selection Process

Selecting the host for an Olympic Games is conducted via the IOC's host selection process. The host selection process is essentially an open tender,¹ where the IOC calls for cities, not countries, to put forward competitive bids to host the Olympic Games.² That a city is the focus of the Games differs from some other sports mega-events, like the FIFA World Cup, where the event takes place across an entire country (or even multiple countries). The IOC's host selection process for interested cities consists of two stages: the 'Applicant City' stage, and the 'Candidate City' stage.³ I will also discuss pre-bid activities.

Fig. 7 – Timeline of the Host Selection Process



¹ Although the IOC seems to take some umbrage with this classification. International Olympic Committee, 'Olympic Agenda 2020: Context and Background' (2014) 14 (Agenda 2020).

² International Olympic Committee, Olympic Charter (2014) Rule 32.2 (Olympic Charter).

³ Following the submission of this dissertation, the IOC altered the host selection process, changing the process to a one-stage process that is divided across themes. This new process will not be addressed here. International Olympic Committee, Candidature Process Olympic Games 2024 (2015).

2.1. Pre-Bid Activities

Nine years before the final bearer of the Olympic Torch arrives at the opening ceremony to light the Olympic Flame and mark the beginning of an Olympic Games, the official process to select the host city begins. For the cities, planning to host the Games has its genesis years before the official process is underway. Although the initial impetus to bid to host the Games may originate from anywhere, it seems that it often comes from communities of elites in the local politics, business, or sports scene. Bidding to host the Games may also come from the highest levels of government, as discussed in Chapter Three. Once the public authorities accept the idea of possibly hosting the Olympic Games, cities begin to engage in a variety of pre-bid activities. A bid committee is established to develop, and ultimately submit the bid. The bid committee often has a board of sporting, business, and political elites of the city or country. For instance, as of May 2015, the Boston 2024 bid committee had 31 members on its Board of Directors, including various CEOs, sports figures (such as Boston Red Sox player David Ortiz), and Massachusetts state senators. The Board members of Boston 2024 appear to outnumber the staff, who are listed at 13 individuals.⁴ Once the bid committee is established, the committee and the city engage in activities such as conducting feasibility studies, or engaging in public relations campaigns in order to measure and build support for a bid. Cities may also choose to host smaller-scale sporting and non-sporting events to demonstrate to the IOC that they can successfully host a mega-event, and to win the favour of the heads of the IFs associated with the event, who may be IOC members.

Before putting together a bid, the city must also secure the approval of the country's NOC.⁵ Often, this step is a mere formality as only one city in the particular country is interested and the NOC is involved with the city from the beginning. In cases where multiple cities from one country are interested in bidding to host the Olympic Games, the NOC is required to back only one.⁶ This scenario occurred prior to the host selection for the 2016 Games, where the United States' cities of Chicago, Houston, Los

⁴ Boston 2024, 'Our Team' <<https://www.2024boston.org/about>> accessed 28 May 2015.

⁵ Olympic Charter (n 2) Rule 33, bye-law 1.1.

⁶ *ibid* Rule 33, bye-law 1.3.

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Angeles, Philadelphia, and San Francisco declared their interest in hosting the Games. The United States Olympic Committee eventually selected Chicago over Los Angeles in a final vote on April 14, 2007, five months before the 2016 bid was due to the IOC.⁷ The USOC undertook a similar process with bidding for the 2024 Games, selecting Boston over San Francisco, Los Angeles, and Washington, D.C.⁸

A rare situation arises when the NOC is not interested in submitting an Olympic bid, and a city attempts to bid anyways. During the bidding for the 2020 Summer Olympic Games, the city of Las Vegas attempted to submit a bid. The USOC refused to support the bid, publicly stating that it would not support any bid for the 2020 Games, or any future Olympic Games, while it was sorting out a disagreement over sponsorship and broadcasting arrangements with the IOC.⁹ When Las Vegas submitted their bid to host the 2020 Games, the IOC summarily dismissed the bid.¹⁰

Cities that initially answer the call to bid may drop out of the bidding process for various reasons. For instance, the global financial crisis of 2007–08 and ensuing austerity of the government of Italy led to the government withdrawing its support of Rome’s bid for the 2020 Summer Olympics on the literal evening before the deadline for Applicant Cities to submit their bids.¹¹ As discussed in Chapter Two of this thesis, the host selection process for the 2022 Winter Olympic Games saw Krakow withdraw due to a negative referendum outcome, and saw Oslo withdraw as the government decided it would no longer support the bid.

Generally, these preliminary matters are dealt with before officially bidding for the Games opens. Once the bidding for the Games is announced, the first bids are due in short

⁷ Juliet Macur, ‘Chicago 2016 Offers the I.O.C. a Compact Games Plan’ *New York Times* (New York, 8 April 2009) B14; Eric Ferkenhoff, ‘Chance to Have Olympics is a Balm for a Troubled City’ *New York Times* (New York, 15 April 2007)

<<http://www.nytimes.com/2007/04/15/sports/othersports/15cities.html?scp=87&sq=&st=nyt>> accessed 28 May 2015.

⁸ However, on the eve of the submission of this dissertation, Boston withdrew from bidding for the 2024 Olympics. The USOC eventually settled on Los Angeles as the bidder for the 2024 Summer Games. Katharine Q. Seelye, ‘Support Lacking, U.S.O.C. Pulls Bid’ *New York Times* (New York, 28 July 2015) B11.

⁹ Juliet Macur, ‘U.S. Says It Won’t Bid for Games in 2020’ *New York Times* (New York, 23 August 2011) B10.

¹⁰ Phillip Hersh, ‘Olympic Bid Not Happening in Las Vegas’ *Chicago Tribune* (Chicago, 29 August 2011) <http://articles.chicagotribune.com/2011-08-29/sports/chi-olympic-bid-not-happening-in-vegas-20110829_1_olympic-bid-ioc-president-jacques-rogge-usoc> accessed 20 April 2015.

¹¹ Stephen Wilson and Paul Logothetis, ‘Rome’s 2020 Olympic Bid Scrapped’ (*ESPN*, 14 February 2012) <http://espn.go.com/olympics/story/_/id/7574333/rome-2020-summer-olympics-games-bid-scrapped-italy> accessed 20 April 2015.

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order. The official bidding process lasts about two-and-a-half years, and is conducted well in advance of the Games. For example, the initial call for bids to host the 2016 Summer Olympic Games was made by the IOC on May 16, 2007. The initial bids in the first stage (the ‘Applicant Cities’), were due on September 13, 2007, almost nine years before the Games were to begin. The bids for the second stage (the ‘Candidate Cities’) were due on February 12, 2009. The final selection of the host city occurred on October 2, 2009, seven years before the Games, and two-and-a-half years after the bidding process had begun. Seven cities ended up submitting bids for the 2016 Olympic Games: Baku, Chicago, Doha, Madrid, Prague, Rio de Janeiro, and Tokyo.

The reforms of Agenda 2020 have made one change to this process, which is to introduce an ‘assistance phase’ where the IOC will advise the cities about the host selection procedure, Games requirements, and “how previous cities have ensured positive bid and Games legacies”.¹² This does not fundamentally alter the host selection process, but does provide another point of contact between the IOC and the bidding cities at an earlier stage than previously.

2.2. Applicant City Stage

Cities that have submitted an initial bid to host the Olympic Games are known as ‘Applicant Cities’. At this stage, formally titled the ‘Candidature Acceptance Procedure’, the IOC requires the cities to answer a set of questions, to which the cities respond by submitting a ‘mini-bid book’.¹³ As of the bidding for the 2022 Winter Olympics, the IOC requires the Applicant Cities to respond to 101 questions (not including various sub-questions) across eleven themes: vision, concept and legacy; sport and venues; environment and meteorology; accommodation; transport; medical services and doping control; safety and security; technology and energy; legal aspects and custom and immigration formalities; government and public support; and finance and marketing.¹⁴ These questions are

¹² Agenda 2020 (n 1) 15.

¹³ As of 2020, these books were about 120–130 pages in length. This length includes maps of the planned venues. In terms of text, the bid books are about 90 pages, with half of the pages in French and half repeating the information in English.

¹⁴ International Olympic Committee, 2022 Candidature Acceptance Procedure: XXIV Olympic Winter Games (2013) (2022 Candidature Acceptance Procedure).

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‘informational’, in that they seek to obtain information about the city’s plans for hosting the Games, but they also require the cities to provide various guarantees, such as government support for the Games, and free access to the country for IOC personnel. Although these categories and questions may change in their specifics from year-to-year, they have been generally consistent since at least the 2012 Olympic Games host selection process.

Following the submission of the ‘mini-bid books’, the IOC establishes a Working Group to review the bids. The Working Group is composed of people from the IOC, the IFs, the NOCs, and the IOC Athletes’ Commission.¹⁵ In their published report, the Working Group relies on the bids, a video conference with the bidders, and external reports.¹⁶ The Working Group is charged with assessing:

The potential of Applicant Cities—including their countries—to host, organise and stage successful Olympic Games...

Compliance with the Olympic Charter, the IOC Code of Ethics, the Rules of Conduct applicable to all cities wishing to organise the Olympic Games, the World Anti-doping Code, this Candidature Acceptance Procedure and all other rules, instructions and conditions which may be established by the IOC.

Any other criteria, which the IOC Executive Board, at its sole discretion, may deem reasonable to consider.¹⁷

The Working Group scores the bids on a scale of 1–10 for each category. Scores for each category are given a minimum and maximum range representing the best and worst case scenarios.¹⁸ In some years, the scores were aggregated into an overall score for the overall bid, with each category weighted in calculating the overall score,¹⁹ although the awarding of final scores was abandoned as of the bidding to host the 2020 Games. Following the

¹⁵ *ibid* at 24.

¹⁶ International Olympic Committee, XXIV Olympic Winter Games 2022 Working Group Report (2014) 6 (2022 Working Group Report).

¹⁷ *ibid* at 5.

¹⁸ *ibid* at 6–7.

¹⁹ See International Olympic Committee, Report by the IOC Candidature Acceptance Working Group, Games of the XXXI Olympiad in 2016, 12 (2008) (2016 Working Group Report).

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Working Group's report, the IOC Executive Board votes to determine which cities move on to the second stage of the host selection process and become official 'Candidate Cities'.²⁰

The 2016 Olympic Games provide a case study on how much, or how little, the technical evaluation matters to the overall bid. The Applicant City bids for the 2016 Olympic Games were given final scores as follows: Baku – 4.3; Prague – 5.3; Rio de Janeiro – 6.4; Doha – 6.9; Chicago – 7.0; Madrid – 8.1; and Tokyo – 8.3.²¹ The IOC considered that cities with a score above 6.0 could viably host the Games, and thus move on to the next round of the host selection process.²² However, Doha's candidature was not approved by the IOC's Executive Board despite its score being above not only the threshold, but also above the eventual 2016 host city of Rio de Janeiro. One commentator has speculated that Doha's bid raised three major concerns not captured by the numbers: (1) a small population, (2) a lack of facilities, and (3) a desire to hold the Games outside of the IOC's preferred window in an effort to reduce the effects of Qatar's oppressive heat, which the IOC did not want to accept.²³ Similar factors seem to have been at work in the Working Group's assessment of the Doha 2020 bid, where they cited as risks: (1) Doha's heat, (2) the proposed September window for hosting the Games, (3) Doha's time zone, and (4) that Qatar would host the FIFA World Cup only two years after the Games.²⁴ For the 2016 Olympic Games, Chicago, Madrid, Rio de Janeiro, and Tokyo were selected as Candidate Cities.

²⁰ Olympic Charter (n 2) Rule 33, bye-law 1.6.

²¹ 2016 Working Group Report (n 19) at 107.

²² *ibid* at 12.

²³ 'IOC Bends Rules When Selecting 2016 Olympic Bid Shortlist' (*Gamesbids*, 4 June 2008)

<<http://gamesbids.com/eng/summer-olympic-bids/2016-olympic-bid-news/ioc-bends-rules-when-selecting-2016-olympic-bid-shortlist/>> accessed 20 April 2015. Doha wanted to host the 2016 Summer Games from Oct. 15 – Oct. 30, outside of the July 15 – Aug. 31 window specified by the IOC. 2016 Working Group Report, n 19 at 58. However, hosting a Summer Games later in the calendar year is not without precedent, as Mexico City (Oct. 12 – Oct. 27, 1968) and Sydney (Sept. 15 – Oct. 1, 2000) have done so in the past. For their 2020 bid, Doha proposed hosting the Games in a window between 20 September and 20 October 2020, with more precise dates of 2 October to 18 October 2020, which the IOC accepted in principle. International Olympic Committee, Games of the XXXII Olympiad 2020 Working Group Report (2012) 6, 62 (2020 Working Group Report).

²⁴ 2020 Working Group Report (n 23) at 73.

2.3. Candidate City Stage

Cities selected to become Candidate Cities enter the final stage of the host selection process, the “Candidature Procedure”. Candidate Cities may use the Olympic Rings on various emblems and promote themselves as such.²⁵ This public, visible association with the Olympic Rings alone helps to raise the city’s global profile and brand. The IOC distributes a second questionnaire, similar in format to the one presented to the Applicant Cities. However, the Candidature Procedure is far more in-depth than in the Candidature Acceptance Procedure. The Candidate Cities are asked 162 questions (and dozens more sub-questions) over fourteen themes, which for 2022 were: vision, legacy and engagement; overall concept of the Olympic Games; political and public support; legal aspects; sustainability; finance; marketing; sport and venues; Paralympic Games; Olympic Village; Games safety, security, and medical services; accommodation; transport; and media operations.²⁶

Following the submission of the Candidature Procedure bids, the IOC establishes an Evaluation Commission. The Evaluation Commission is composed of IOC Members, NOC members, International Paralympic Committee members, and other advisors.²⁷ The Evaluation Commission conducts site visits to the Candidate Cities.²⁸ These site visits are highly regulated by the IOC, a by-product of the ‘Salt Lake City Scandal’, discussed in Chapter Two, where individual IOC members would visit cities bidding for the Olympic Games, and receive varying inducements, or outright bribes, to vote for the city. The purpose of the Evaluation Commission is to evaluate the bid, and to highlight the risks associated with each bid.²⁹

²⁵ International Olympic Committee, 2022 Candidature Procedure and Questionnaire: XXIV Winter Olympic Games (2014) 25 (2022 Candidature Procedure).

²⁶ *ibid.* The bid books submitted by the Candidate Cities are three volumes, each about 120 pages, three times the size of the Applicant City bid.

²⁷ International Olympic Committee, ‘Report of the 2020 Evaluation Commission: Games of the XXXII Olympiad’ (2013) 104; International Olympic Committee, 2020 Evaluation Commission Members’ Biographies (2013)

<http://www.olympic.org/Documents/Host_city_elections/2020_Evaluation_Commission_Members_Biographies.pdf> accessed 21 April 2015.

²⁸ Olympic Charter (n 2) Rule 33, bye-law 2.3.

²⁹ *ibid.*; Agenda 2020 (n 1) 18.

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Following the Evaluation Commission's report, the final step is a final presentation by the Candidate Cities to the IOC Session and a vote by the session. This event takes place in a country that does not have a Candidate City for those particular Games.³⁰ The presentations by the Candidate Cities have become grandiose pieces of theatre in recent years, as the bid committees bring along famous athletes, celebrities, and heads of state to make their final pitch for the votes of the IOC members. Following the presentations, the IOC Session holds a vote via secret ballot to select the Host City. The voting method used by the IOC is an 'exhaustive ballot' method, which requires a city to receive more than 50% of the votes to be declared the victor. Following the first round of voting, if there is no Candidate City with more than 50% of the votes, the city with the lowest number of votes is eliminated, and voting continues. This process repeats itself until a Candidate City receives more than 50% of the IOC Session's votes. Although the ballots cast by individual IOC members are secret, the IOC publishes the vote totals for each round. Finally, IOC members who come from countries that have Candidate Cities still in the race are not allowed to vote while the particular city is still in the race.³¹

Returning to the 2016 Summer Olympic host selection process, the Candidate Cities met at the 121st IOC Session in Copenhagen, Denmark in October 2009. Following the examples of the successful London 2012 and Sochi 2014 Olympic bids, which featured appearances by then-British Prime Minister Tony Blair, and then-Russian President Vladimir Putin, respectively, the 2016 Candidate Cities held nothing back. Amongst the presenters in Copenhagen in support of the four Candidate Cities Chicago, Madrid, Rio de Janeiro, and Tokyo, were United States President Barack Obama, former IOC President Juan Antonio Samaranch of Spain, Brazilian President Luiz Inácio Lula da Silva, and Japanese Prime Minister Yukio Hatoyama. When it came time to vote, Chicago was eliminated after the first ballot, as it received only 18 votes from IOC members, compared to Tokyo (22), Rio (26), and Madrid (28). The second round of balloting saw Rio move into the lead with 46 votes, over Tokyo (20) and Madrid (29), but falling short of the 50% threshold required for victory. A final round of voting was held, and Rio emerged as the host of the 2016 Summer Olympic Games with 66 votes to Madrid's 32. Rio was selected

³⁰ Olympic Charter (n 2) Rule 33.4.

³¹ E.g. International Olympic Committee, '2020 Olympic Games Bid Procedure 'Quick Reference'' 3–4 (2013).

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as the 2016 host despite receiving the lowest technical evaluation score of the Candidate Cities, and even one of the cities that did not advance to the Candidate City stage—Doha. The result also surprised many pundits, who favoured Chicago or Tokyo.³² Presumed reasons for Rio's win have ranged from the IOC's desire to have a South American country host an Olympic Games,³³ to the IOC-USOC tensions,³⁴ to concerns over American foreign policy.³⁵ Discerning why a city was chosen to host the Olympic Games remains mysterious and unpredictable.³⁶

3. The Host Selection Process—Procedural Legitimacy and Accountability

Chapter Two introduced the concept of procedural legitimacy. To be considered legitimate, decision-making processes should be rational, impartial, transparent, and involve public participation. I will apply these elements to examine the IOC's host selection process. The

³² See Melody K. Hoffman and Kevin Chappell, 'Why Chicago May Have Lost Olympics Bid' *Jet Magazine* (19 October 2009) 8; Hiroko Tashiro, 'Tokyo's Chances Fade for 2016 Olympics' *BusinessWeek Online* (28 September 2009) 1; John Mark Hansen and Allen R. Sanderson, 'The Olympics of Voting' *Forbes* (22 June 2009) 26.

³³ See George Vecsey, 'A Great Choice, Even if Others Were Worthy' *New York Times* (New York, 3 October 2009) D1.

³⁴ *ibid.* The USOC was at odds with the IOC over television contracts and marketing agreements, including an USOC-announced 24-hour Olympic television network. Brian Cazeneuve, 'It's Not You, It's Them' *Sports Illustrated* (12 October 2009) 22. Too late for Chicago, on April 21, 2010, the USOC ended its pursuit of the network. Richard Sandomir, 'U.S.O.C. Ends Plans for its Own Olympic Channel' *New York Times* (22 April 2010) B13.

³⁵ See Michelle Higgins, 'Chicago's Loss: Is Passport Control to Blame?' *New York Times* (2 October 2009) <<http://intransit.blogs.nytimes.com/2009/10/02/chicagos-loss-is-passport-control-to-blame/>> accessed 20 April 2015 (highlighting a comment by Pakistani IOC member Syed Shahid Ali describing entering the U.S. as "a rather harrowing experience.").

³⁶ Arne Feddersen, Wolfgang Maennig and Phillip Zimmerman, 'How to Win the Olympic Games – The Empirics of Key Success Factors of Olympic Bids' (2007) Hamburg Contemporary Economic Discussions, No. 02 <<http://www.uni-hamburg.de/onTEAM/grafik/1098966615/HCED-02.pdf>> accessed 10 June 2015 (examining a variety of quantitative factors such as the host city's population, gross domestic product, etc., and found that only the distance of the Olympic Village from the sporting venues, average temperature, and the number of hotel beds within fifty minutes of the venues to be statistically significant variables). Arne Feddersen and Wolfgang Maennig, 'Determinants of Successful Bidding for Mega Events: The Case of the Olympic Winter Games' in Wolfgang Maennig and Andrew Zimbalist (eds), *The International Handbook on the Economics of Mega Sporting Events* (Edward Elgar 2012) 70 (examining some similar factors and some new factors related to the Feddersen, et al study as applied to the Winter Olympics, and finding a much higher significance amongst the variables). Paul D. Poast, 'Winning the Bid: Analyzing the International Olympic Committee's Host City Selections' (2007) 33 *International Interactions* 75, 91 (finding that the IOC cares about continental diversity and economic growth). Christer Persson, 'The Olympic Games Site Decision' (2002) 23 *Tourism Management* 27, 36 (finding that what the IOC wanted to see from bids, and what the bidders had mentioned were incongruous).

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first two elements will be briefly discussed, while greater attention will be paid to transparency and public participation. Particular attention is being paid to the latter two because they are more complex elements.

3.1. Legitimacy of the Decision-Making Process

Procedural legitimacy requires institutions to adhere to ‘correct procedure’ when making decisions.³⁷ This element of legitimacy can be seen as close to the concept of establishing a basic rule of law where “government in all its actions is bound by rules fixed and announced beforehand.”³⁸ Drawing from administrative law procedures, the process should be rational, consistent, and impartial.³⁹

In terms of rationality, the host selection process used by the IOC can be seen to be rational. Multiple cities seek to host the Olympic Games, and the IOC needs some process to select which city should host the Games. The process requires the cities to set out how they will meet various technical criteria, as well as explain in a more general tone how they would make a good host for the Olympics. The host selection process includes a technical evaluation, to measure the technical criteria. Additionally, the IOC members are able to vote on the host city, and can take other criteria into account.

The host selection process used by the IOC is arguably impartial. On the one hand, the technical evaluation by the IOC administration is an impartial evaluation of the various candidates. On the other hand, the voting by IOC members has the potential to be highly partial. This is not to say that the host selection process is tainted by corruption, as it was in the past. However, practices such as vote-trading may place partiality into the process. In addition, the uneven distribution of IOC members may lead to members being partial to one geographic area over another, which has led to charges that the Euro-centric membership of the IOC is more likely to vote for European hosts than for hosts from other continents.

³⁷ Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford University Press 1990) 38; Ian Hurd, *After Anarchy* (Princeton 2007) 71.

³⁸ Friedrich A. Hayek, *The Road to Serfdom* (University of Chicago Press 1944) 54. See also, John Rawls, *A Theory of Justice* (Harvard University Press 1972) 235 (defining rule of law as “the regular and impartial administration of public rules”). Broader definitions of ‘rule of law’ have been put forth, which encompasses elements such as democracy and human rights.

³⁹ Carol Harlow, ‘Global Administrative Law: The Quest for Principles and Values’ (2006) 17 *The European Journal of International Law* 193.

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The IOC's host selection process is also consistent. The process has been largely the same for over fifteen years, since the selection of the 2008 Beijing Games (i.e., since 1999). Changes to the process have been relatively small, but the core of the process (two-stage process, general tenor of the questionnaires) has remained consistent. Given the above, the decision-making process itself can be said to have a high degree of legitimacy. More problematic is the relative weakness of the accountability mechanisms available throughout the host selection process, discussed below.

3.2. Transparency of the Host Selection Process

Transparency is more than simple access to information. A process is transparent when the behaviour and motives of an actor are made readily visible or knowable to interested parties.⁴⁰ To rid of any misconceptions, transparency is simply more than access to information. Transparency may be either passive or active.⁴¹ Passive transparency exists when an actor responds to requests from interested parties to provide access to information. An example of passive transparency mechanisms would be freedom-of-information laws, or disclosure as a result of an investigation.⁴² Active transparency involves positive steps taken by the actor to make information public on their own initiative. Release of information such as budgets, or voluntary submission to a third-party evaluative body would be examples of active transparency.⁴³

In examining the IOC's transparency, I will begin with the documentation that is at the heart of the host selection process: the IOC's requirements, and the bids submitted to host the Olympics. The questionnaires used by the IOC are accessible via the IOC's website in English and French.⁴⁴ In contrast to the IOC's questionnaires, the bids themselves are not as readily-accessible to the public. Sometimes, the bids are accessible

⁴⁰ Thomas N. Hale, 'Transparency, Accountability, and Global Governance' (2008) 14 *Global Governance* 75; Daniel C. Esty, 'Good Governance at the Supranational Scale: Globalizing Administrative Law' (2006) 115 *Yale Law Journal* 1522, 1533.

⁴¹ Hale (n 40) 75; Jonathan Fox, 'The Uncertain Relationship Between Transparency and Accountability' (2007) 17 *Development in Practice* 663, 665.

⁴² Fox (n 41) 668.

⁴³ *ibid.*

⁴⁴ International Olympic Committee, Documents (*Olympic.org*) <<http://www.olympic.org/host-city-elections/documents-reports-studies-publications>> accessed 21 April 2015 (select "Host City Elections" on the right drop-down menu).

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via websites maintained by the bidding committees. To take the example of the 2022 Winter Olympic Games, I was able to obtain Oslo's Applicant City bid from its website, but the websites for the Beijing and Almaty bids did not even appear until the Candidature City phase was well underway. As of November 1, 2014, the Beijing website did post some snippets that were presumably from their Applicant City bid,⁴⁵ although I could not obtain a .pdf file of either the Beijing or the Almaty bids. Sometime after the submission of the bids, they can be physically obtained from the Olympic Library in Lausanne. However, this approach is impractical, and Agenda 2020 has called for the abolition of physical bids.⁴⁶ Some of the bids are stored in an online Swiss research database.⁴⁷ However, this database is unlikely to be publicly-known, has no clear direction from the IOC's website, and is not very easy to navigate. While Candidate City bids are often on the database, Applicant City bids are often missing. Finally, not all of the components of the bids are included as the guarantee letters the bidders give to the IOC are often missing. Regardless of the location, there appears to be an inconsistency as to what information from the bids is made public. Additionally, the lag between the submission of the bid and its placement on the website reduces the efficacy of transparency.

Even if the bids are physically accessible to the public, they are often not linguistically accessible. The IOC's questionnaires are in English and French, the two official languages of the IOC. Bid books must be submitted to the IOC in English and French,⁴⁸ although this was not the case for the 2010–2014 editions of the Youth Olympic Games, which required only English bids. With the IOC's documentation, and the bids submitted, in English and French, residents in bidding cities that do not have a high population of English or French speakers may not be able to read the bids, and thus are unable to know what their governments have planned and promised, unless the bid committee translates the bid. Some bidders are beginning to ensure linguistic access to their bids, through their websites, or even in the bids themselves. For instance, the Beijing 2022

⁴⁵ Beijing 2022 Winter Olympic Games Bid Committee, 'Q&A' (*Beijing 2022*) <<http://www.beijing-2022.cn/en/BidQ&A.htm>> accessed 28 May 2015.

⁴⁶ Agenda 2020 (n 1) 20.

⁴⁷ R  rodoc Digital Library <<https://doc.rero.ch>> accessed 21 April 2015.

⁴⁸ 2022 Candidature Procedure (n 25) 199.

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website provided information about the bid in Mandarin, taking excerpts from the bid,⁴⁹ while Oslo 2022 had less specific information about the bid in Norwegian.⁵⁰ Krakow's 2022 Winter Games Applicant City bid file was submitted in two separate files: English/French and English/Polish.⁵¹

Other documents have been, until recently, much less transparent than the bids. In particular, the Host City Contract between the IOC, the Host City, the OCOG, and the country's NOC, was kept under embargo. However, the IOC has pledged as part of Agenda 2020 to make the Host City Contract public.⁵² The IOC's Technical Manuals, which have been created to guide the hosts in the execution of the Games, are also being made more publicly-accessible. The same linguistic concerns apply to these documents as the bid documents.

Yet, transparency does not relate to documents, but also to process. The IOC selects the host of the Olympic Games in two steps: the Applicant City stage, and the Candidate City stage. The evaluation of the Applicant Cities is transparent. The Working Group engages in a technical evaluation, the results of which are published on the IOC's website. Thus, not only the documents, but the reasons that the Working Group finds some bids to be more viable than others, are transparent. The ultimate decision of the Executive Board as to which cities proceed to the next stage is not transparent as to reasons, but with the Working Group's recommendations in hand, and with the Executive Board often making decisions along the same lines as the Working Group in regards to viability, the reasons behind the Executive Board's decisions can often be presumed.

When it comes to selecting the host from the Candidate Cities, the process is slightly less transparent. Although there is a report from the Evaluation Commission, this appears to be less decisive than that of the Working Group. Instead of relying solely on the report from the Evaluation Commission to select the host based on technical merit, the IOC Session votes for the host of the Games. Members of the IOC session may vote for a

⁴⁹ '申冬奥 ABC' (*Beijing 2022 Olympic Winter Games Bid Committee*) <<http://www.beijing-2022.cn/l/news/sdaabc/list2014062918328.htm>> accessed 10 July 2015.

⁵⁰ 'Oslo 2022: Candidate City' (*Oslo 2022*, 1 September 2014) <<https://web.archive.org/web/20140901132349/http://www.ol22.no/no/muligheter>> accessed 10 July 2015.

⁵¹ Krakow, Applicant City (2022).

⁵² Agenda 2020 (n 1) 15.

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particular host for a variety of reasons. These reasons may include: (1) a belief in the technical merits of the bid, (2) a belief in other merits (e.g., political, economic) of the bid, (3) geopolitical reasons (supporting a bid from a ‘friendly’ country), (4) strategic reasons (e.g., a Canadian IOC member may not vote for an American Olympic bid to ensure that a future Canadian bid is not disqualified based on continental rotation). The transparency of voting is limited. The IOC publishes its votes in the aggregate, revealing the identity of the victor, and how many votes each bid received at each stage of voting. However, which IOC member voted for which Candidate City is not known. This is more transparent than those organisations that keep their results secret, except for the winner.⁵³ Although the provision of aggregate votes can provide some insight into the decision-making process of an institution, the picture painted is a fuzzy one. A question to be asked then, is whether or not the IOC should publish the voting records of its members.

The IOC has had a patchy, but improving record of transparency. Bids are becoming increasingly accessible by anyone with access to the Internet. Documentation from the IOC such as evaluations, and soon even the Host City Contract are publicly accessible. However, gaps still need to be filled. Language is a problem. The average citizen in Almaty, Kazakhstan, which bid for the 2022 Winter Olympic Games, is unlikely to read English or French, and thus could not read the IOC documents or the Almaty bid. The publication of individual votes from IOC Members is also an open question. Even if these elements were fixed, however, transparency is not enough. In administrative decision-making, it is vital that an interested party is able to meaningfully respond to the behaviour of an actor.⁵⁴

⁵³ The International Rugby Board uses this form of voting, which led to criticism, particularly in the selection of the host of the 2011 Rugby World Cup. Paul Lewis, ‘Japan Bid for Rugby World Cup Couldn’t Deliver’ *New Zealand Herald* (Auckland, 15 January 2006) <http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=10363748> accessed 16 July 2015; David Llewellyn, ‘Japan Fume as Kiwis Win 2011 World Cup Vote’ *Independent* (London, 18 Nov. 2005) <<http://www.independent.co.uk/sport/rugby/rugby-union/japan-fume-as-kiwis-win-2011-world-cup-vote-515746.html>> accessed 16 July 2015.

⁵⁴ Fox (n 41) 665.

3.3. Public Participation in the Host Selection Process

Public participation in decision-making is “the process through which an organisation enables key stakeholders to play an active role in the decisions and activities which affect them.”⁵⁵ Therefore, when examining public participation, two elements should be considered: (1) the procedures used to enable participation (and thus to what degree participation is available), and (2) the identity of the stakeholders whose participation is and should be encouraged. This section will address these elements in turn.

Public participation can be enabled through a variety of procedures, such as stakeholders submitting written comments, participating in referenda, forming interest groups, and engaging in mass demonstrations.⁵⁶ Erik Mostert frames public participation as a sliding scale. At the lowest level of participation, an actor may simply provide information to stakeholders (i.e., engage in transparency). Higher levels of public participation include consultation, discussion, co-design, and co-decision-making with stakeholders. At the highest level of public participation, decision-making is undertaken by the stakeholders themselves.⁵⁷

Who are the stakeholders that should be consulted prior to a decision? Broadly speaking, stakeholders may be individual citizens, interest groups, corporations, other levels of government, amongst others.⁵⁸ Generally speaking, a broad net should be cast to allow for those who may be affected by the decision to engage in some form of participation prior to the decision. Recently, scholars have recognized that special attention should be given to those stakeholders who lack access to opportunities for participation.⁵⁹ In numerous cases, administrative actions affect those who are vulnerable, unorganized, and who are otherwise unable to participate in the decision-making process. These groups include racial and ethnic minorities (including indigenous groups), or economically-marginalized people such as the homeless.

⁵⁵ Monica Blagescu, Lucy de Las Casas and Robert Lloyd, *Pathways to Accountability: A Short Guide to the GAP Framework* (OneWorldTrust 2005) 2. See also Kingsbury et al (n 53) 37–39; Esty (n 40) 1531–32.

⁵⁶ Erik Mostert, ‘The Challenge of Public Participation’ (2003) 5 *Water Policy* 179, 180.

⁵⁷ *ibid* 183.

⁵⁸ See *ibid* 180.

⁵⁹ Esty (n 40) 1532.

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Avenues for public participation appear to be scarce throughout the host selection process. Beginning with the decision to bid for the right to host the Olympic Games, the local populace of the city is often uninvolved. Instead, the decision to bid is often an elite-driven, top-down, consultant-crafted affair.⁶⁰ Bids may be in response to a desire by a NOC to host the Olympic Games, which can be seen in the USOC asking American cities to bid for the 2024 Games.⁶¹ Or, referenced in Chapter Four, the decision to bid may come from the state itself.⁶² Once the decision to bid has taken place, bid committees appear to have a poor record of public participation. One study of American Olympic bids revealed a lack of public participation in the decision-making for the Los Angeles, Atlanta, and Salt Lake City Games.⁶³ A bid by Boston to host the 2024 Summer Olympic Games, undertook public meetings across Boston and the State of Massachusetts, amongst other forms of outreach.⁶⁴ It is telling about the state of public participation in regards to the Olympic Games when public participation is only just becoming a reality in a liberal-democratic country like the United States. In countries with poor records of accountability, public participation is unlikely to occur at all.

As can be seen with Boston, while participation may be through formal mechanisms, participation is also often achieved through anti-Olympic Games movements. However, these movements are unlikely to improve public participation on their own. Many anti-Games movements are not *per se* against the Games. Instead, these movements are a menagerie of groups that are concerned with various social issues, such as housing, rights of indigenous persons, privatization of state resources, public spending on health care and education, and so forth. These movements use the Olympic Games as a platform for protest, and join forces under an ‘anti-Olympic’ umbrella, creating what Jules Boykoff calls

⁶⁰ See Harry H. Hiller, ‘Mega-Events, Urban Boosterism and Growth Strategies: An Analysis of the Objectives and Legitimations of the Cape Town 2004 Olympic Bid’ (2000) 24 *International Journal of Urban and Regional Research* 439, 440. See also Graeme Hayes and John Horne, ‘Sustainable Development, Shock and Awe? London 2012 and Civil Society’ (2011) 45 *Sociology* 749, 759 (finding London 2012’s approach to sustainable development to be a top-down approach).

⁶¹ Lynn Zinser, ‘Trolling for a Summer 2024 Host, the U.S.O.C. Casts a 35-City Net’ *New York Times* (New York, 20 February 2013) B14.

⁶² Richard Tomlinson, ‘Whose Accolades? An Alternative Perspective on Motivations for Hosting the Olympics’ (2010) 21 *Urban Forum* 139 (discussing the central role of the Chinese Communist Party in the Beijing 2008 Games).

⁶³ Greg Andranovich, Matthew J. Burbank and Charles H. Heying, ‘Olympic Cities: Lessons Learned from Mega-Event Politics’ (2001) 23 *Journal of Urban Affairs* 113.

⁶⁴ Boston2024, ‘The Road Ahead’ (*Boston2024*) <<https://www.2024boston.org/process>> accessed 03 June 2015.

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a “movement of movements.”⁶⁵ Even the Olympic-focused organisations such as ‘No Boston Olympics’,⁶⁶ are transient in nature. While the IOC maintains a global organisation through the Olympic Movement, the anti-Olympic movements, and the more moderate Olympic-sceptic movements, are often locally-organised, which leads to an imbalance in resources. Given the disorganisation of the Olympic-sceptical movements, it is vital that the state and the IOC enable those who are affected by the Games to have a voice in whether and how the Games are to be organised.

This lack of public participation likely persists in part because the IOC requires little in the way of public participation. Applicant Cities for the 2020 Summer Olympic Games were asked about “general public opinion” of the bid, and for details on opinion polls carried out.⁶⁷ The IOC also asks Applicant Cities whether they are required to, or could be forced to, carry out a referendum to host the Games.⁶⁸ Finally, the IOC also asks for details on opposition to the Games.⁶⁹ Similar questions are asked at the Candidate City stage, but the IOC also asks about awareness campaigns that were carried out by the Candidate Cities.⁷⁰ The Candidate Cities for the 2020 Summer Olympics carried out opinion polls with sample sizes of 2000 (Tokyo and Madrid), and 2400 (Istanbul).⁷¹ The Winter Olympics included sample sizes of 1,600 (Almaty) and 2500 (Beijing).⁷² While these sample sizes are statistically sufficient to measure public opinion, this is limited ‘public participation’. The 2020 bids referenced support from public authorities, the private sector, and unions. Four of these five bids denied opposition, while Beijing admitted that some citizens held “concerns that hosting the Olympic Winter Games may exert more pressure on the environment and that the cost of hosting the Games may be too high.”⁷³

Much of the public participation in the bidding process appears to be at the lower levels of Mostert’s degrees of public participation. Information is provided, whether

⁶⁵ Jules Boykoff, *Activism and the Olympics: Dissent at the Games in Vancouver and London* (Rutgers University Press 2014) 165.

⁶⁶ No Boston Olympics <<http://www.nobostonolympics.org>> accessed 10 July 2015.

⁶⁷ 2022 Candidature Acceptance Procedure (n 14) 84.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ 2022 Candidature Procedure (n 25) 74.

⁷¹ Tokyo 2020, Candidate City (Vol. 1) 32; Madrid 2020, Candidate City (Vol. 1) 43; Istanbul 2020, Candidate City (Vol. 1) 49.

⁷² Almaty 2022, Candidate City (Vol. 1) 39; Beijing 2022, Candidate City (Vol. 1) 41.

⁷³ Beijing 2022, Candidate City (Vol. 1) 41.

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through a website, or by making the bids public, discussed above under ‘transparency’. Some of the public participation rises to the level consultation, or even discussion, as seen in the Boston 2024 bid. However, these higher levels of public participation appear to be the exception, rather than the rule. Local stakeholders appear to have little input into whether the Games will be held. However, it appears that cities in liberal-democratic countries are holding plebiscites or binding referenda more often than in the past. When it comes to how the Games will be organised, and how the costs and benefits are to be apportioned, local stakeholders also appear to have only a moderate amount of input.

Why is public participation curtailed? Some critics of the Olympic Games point to the broader neoliberal agenda, particularly in the sense of ‘shock capitalism’ discussed in Chapter Four, which bypasses public participation in decision-making as a rule. But, there may be less nefarious reasons that public participation is not sought out. First, bid committees may wish to keep public participation at a minimum because everything remains at a hypothetical state, until the host is selected.⁷⁴ Engaging in public participation at too early a stage may cause two problems: the loss of valuable time, and an inconsistent bid that lacks a unified vision.⁷⁵ Second, bid committees might be concerned that participation could foster opposition to the bid. If stakeholders do not get what they want, they may leave more upset than when they came to the table. Thus, any public participation opens a ‘Pandora’s Box’ of dissent. The defeat of several bids via referendum and weak public support in liberal democratic countries may make this a lesson learned from the 2022 Winter Olympic host selection. Third, bid committees may feel that the public has little to offer in the way of expertise regarding mega-events. Fourth, bid committees might be more concerned with appealing ‘up’ to the IOC rather than ‘down’ to the public. Finally, public participation often leads to increased costs, particularly in time and money, both of which are in short supply in a time-compressed and high-cost environment such as the Olympic Games.⁷⁶

⁷⁴ Graeme Hayes and John Karamichas, ‘Introduction’ in Graeme Hayes and John Karamichas (eds), *Olympic Games, Mega-Events and Civil Societies: Globalization, Environment, Resistance* (Palgrave Macmillan 2012) 22.

⁷⁵ See Mostert (n 56) 182.

⁷⁶ *ibid* 182; Hiller (n 60) 449 (for evidence of a Cape Town bid for the 2000 Summer Olympics that had an environmental impact assessment hobbled by limits of time and money).

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Despite these concerns, the IOC and the bid committees would do well to keep in mind the benefits of public participation. First and foremost, public participation leads to a greater acceptance of decisions, as they are perceived as more legitimate.⁷⁷ Second, participation can lead to social learning amongst the participants, leading to more creative decision-making and problem-solving.⁷⁸ Given the complexity of organising a sports mega-event, having more people working to solve the problems is a net benefit. In a related vein, public participation can also leverage local knowledge. Finally, public participation at the early stages of an Olympics bid can reduce the chances of unpredictability, delay, and negative publicity later on.⁷⁹ In this sense, public participation acts as a ‘safety valve’, channelling public participation into constructive activities such as dialogue, and problem-solving, rather than forcing the public into adversarial actions, such as initiating referenda or legal action. The lesson from the dropping-out of several cities from the 2022 host selection process may be that public participation is required at an early stage, lest the public be cornered into outright rejecting the Games as a last resort. Boston 2024 may end up being an interesting case study in this regard. As Hayes and Karamichas point out: “Alongside the neo-liberal civil society model therefore sits one based on active citizenship and collective social mobilization.”⁸⁰

If public participation remains absent from selecting the host of the Olympic Games, three particular problems will persist: ‘agency capture’, ‘mimetic isomorphism’, and bids only from emerging market economies. First, absent public participation, there is a concern of ‘agency capture’.⁸¹ ‘Agency capture’ is the situation where an agency acts not behalf of the public interest, but rather on behalf of the interest of particular interest groups—often those groups that the agency is supposed to be regulating in the first instance.⁸² In regards to the host selection process, the concern is not so much capture by those whom the IOC is supposed to regulate (e.g., IFs, NOCs, athletes), but capture by

⁷⁷ Mostert (n 56) 180–81.

⁷⁸ *ibid.*

⁷⁹ Hayes and Karamichas (n 74) 22.

⁸⁰ *ibid.*

⁸¹ Richard B. Stewart, ‘U.S. Administrative Law: A Model for Global Administrative Law?’ (2005) 68 *Law and Contemporary Problems* 63, 70–71; Malcolm Foley, David McGillivray and Gayle McPherson, ‘Events Policy: The Limits of Democracy’ (2011) 3 *Journal of Policy Research in Tourism, Leisure and Events* 321, 322.

⁸² Michael A. Livermore and Richard L. Revesz, ‘Regulatory Review, Capture, and Agency Inaction’ (2012) 101 *Georgetown Law Journal* 1337, 1343.

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other interest groups such as governments or commercial interests at the expense of the public welfare. Recalling the concern that bids to host the Games are created and shaped by political and business elites, it is highly likely then, that the benefits from hosting the Games will be designed to accrue primarily (or even solely) to those elites, rather than being structured to meet the needs of the local population.⁸³ Therefore, public participation is a necessary element to ensure that the public interest is considered in the bids and to host the Games, to offset the influence of elites and avoid this form of ‘agency capture’, and to ensure that the legacies of the Games are those that benefit the public at large.

A second problem that may persist absent public participation that the IOC is attempting to address is the problem of ‘mimetic isomorphism’ in the bids submitted to host the Games.⁸⁴ As bid committees rely on elites and experienced consultants to craft the bids to host the Games, the bids, and the promises made within the bids, are becoming similar to the point that they are almost indistinguishable.⁸⁵ Bidding cities also attempt to emulate prior, successful bids. The cost of bidding is so high (often tens of millions of dollars),⁸⁶ and the odds of winning the right to host the Games so long, that any deviation from a ‘proven’ strategy is perceived as an unnecessary risk by the bid committees. However, by focusing too much on what other bids have done is causing bid committees to

⁸³ David Whitson and John Horne, ‘Underestimated Costs and Overestimated Benefits? Comparing the Outcomes of Sports Mega-Events in Canada and Japan’ (2006) 54 *Sociological Review* 71, 86; Hiller (n 60) 193; Andranovich, Burbank and Heying (n 63) 120; Peter Newman, ‘Back the Bid: the 2012 Summer Games and the Governance of London’ (2007) 29 *Journal of Urban Affairs* 255, 258–59.

⁸⁴ Caitlin Pentifallo and Rob VanWynsberghe, ‘Blame it on Rio: Isomorphism, Environmental Protection and Sustainability in the Olympic Movement’ (2012) 4 *International Journal of Sport Policy and Politics* 427; Hayes and Horne (n 60) 750.

⁸⁵ Ryan Gauthier, ‘Olympic Game Host Selection and the Law: A Qualitative Analysis’ (2016) 23 *Moorad Sports Law Journal* (forthcoming).

⁸⁶ Chicago’s bid for the 2016 Summer Olympics was \$48 million. Bids for the 2018 Winter Olympics cost Munich about \$47 million and Annecy \$26.4 million. The head of Annecy’s bid committee resigned when the bid budget was not increased to \$37 million. Bids to host the FIFA World Cup cost a similar amount, with England spending \$27.4 million, and Australia \$45 million. It should be noted that none of these bids were successful. Gene Wojciechowski, ‘IOC All About the Money’ (*ESPN.com*, 2 October 2009) <http://sports.espn.go.com/chicago/columns/story?columnist=wojciechowski_gene&id=4519409> accessed 16 July 2015; Duncan Mackay, ‘Munich Given Backing by German Government for 2018 Olympic Bid’ (*InsidetheGames*, 3 November 2010) <<http://www.insidethegames.biz/articles/10973/munich-given-backing-by-german-government-for-2018-olympic-bid>> accessed 16 July 2016; ‘AP Interview: Annecy Bid Leader Quit Over Budget’ (*ESPN.com*, 13 December 2010) <<http://sports.espn.go.com/espn/wire?section=oly&id=5915066>> accessed 16 July 2015; Culture, Media and Sport Committee, *2018 World Cup Bid* (HC 2010–12, 1031-I) 5; John Duerden, ‘Australia Bid Set It Apart From Asia’ (*ESPN Soccernet*, 6 December 2010) <http://soccernet.espn.go.com/columns/story?id=849628&sec=global&root=global&cc=3888> accessed 16 July 2015.

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fail to consider local capacity in regards to fulfilling their promises made to carry out the Games. Martin Müller examined the Sochi Games and found that Sochi made various promises on the environment without checking to see if the capacity to do so existed, causing a situation where Sochi made promises on carbon neutrality, ‘zero waste’, and ‘social equity’, which were novelties in Russia.⁸⁷ To counteract this problem, the IOC has begun to re-emphasise the local character of the Games, with current IOC President Thomas Bach urging bidding cities to rely on their own experience, and rely less on external consultants.⁸⁸ However, although the Oslo 2022 bid pledged to not use consultants, I am unaware of any other bids making such pledges. As such, as of this writing, bidding to host the Olympic Games remains a top-down project, which may continue missing out on opportunities for social learning, innovative problem-solving, and to take into account local capacity instead of proceeding with grandiose plans without any regard for the local condition.

Finally, if the IOC does not start to seriously emphasize increased public participation, bids from countries that suppress public participation will continue to be advantaged in the host selection process.⁸⁹

3.4. Review

As it stands, the host selection process allows for limited external review by the IOC’s Ethics Commission. Review is generally limited to the conduct of the bid committees and IOC members during the bidding process, to ensure that corruption does not take place and that cities do not run ‘negative’ campaigns against each other. Recourse may officially be had to the CAS, but the author is unaware of any cases that have been in front of the CAS related to the host selection process.⁹⁰ In addition, there seems to be no provision allowing

⁸⁷ Martin Müller, ‘(Im-)Mobile Policies: Why Sustainability Went Wrong in the 2014 Olympics in Sochi’ (2014) 21 *European Urban and Regional Studies* (2014 Sochi Olympics Virtual Issue) 1, 9.

⁸⁸ Callum Murray, ‘Oslo 2022: We Won’t Use Consultants to Write Our Bid After Bach Encouraged Us to be Original’ (*Sportcal*, 6 December 2013) <http://www.sportcal.com/News/news_free_article.aspx?articleid=96687> accessed 23 April 2015; ‘Bach Calls for Overall of Olympic Bid Process’ (*Gamesbids*, 7 June 2013) <<http://gamesbids.com/eng/summer-olympic-bids/2020-olympic-bid-news/bach-calls-for-overhaul-of-olympic-bid-process/>> accessed 23 April 2015.

⁸⁹ Foley, et al (n 81) 322.

⁹⁰ E.g., 2022 Candidature Procedure (n 25) 57. A similar provision does not exist in the 2020 Candidature Acceptance Procedure.

for *ex post* review, after the selection of the host, whereby a city that has been selected could lose the Games due to later findings of corruption during the host selection process.⁹¹

Removal of the Games on grounds such as not adhering to promises made during the host selection process, or other such concerns, are addressed in the Host City Contract, discussed in the next chapter.

4. Improving Transparency and Public Participation in the Host Selection Process

This chapter asks whether the IOC possesses procedural legitimacy in regards to selecting the hosts of the Olympic Games, and begins an examination of the accountability of the IOC for the conduct of the Games. Although the host selection is rational and impartial, it has some shortcoming in regards to both transparency and public participation. Not all of the fault is on the IOC, as the behaviour of the bid committees certainly plays a role. However, the IOC can also encourage greater transparency and public participation than currently. This part will examine possible steps forward for the IOC and the bid committees.

The primary shortcoming with the transparency of the host selection process is accessibility of information. Bid committees do not always provide information that is meaningfully accessible. Requirements that bidding committees have an internet presence prior to submitting their Applicant City bid, including a copy of the bid submitted to the IOC, would be a very easy requirement to impose and for bid committees to meet. Additionally, requiring that bids are written in the official languages of the country (or at least the region that the Games will be held) would close the transparency gap in a low-cost manner.

A trickier question is whether or not to have individual votes of IOC members made public to improve the transparency of the final choice of the host. In considering the

⁹¹ As of this writing, the United States and Swiss governments are investigating corruption related to the 2018 and 2022 host selection process for the FIFA World Cup. FIFA has to this point steadfastly refused to remove the World Cup from Qatar. Ben Rumsby, 'Fifa Crisis: Threat of Russia and Qatar Being Stripped of Next Two World Cups Intensifies' *The Telegraph* (London, 17 June 2015) <<http://www.telegraph.co.uk/sport/football/fifa/11680400/Swiss-investigation-into-Fifa-corruption-and-awarding-of-World-Cups-to-Russia-and-Qatar-could-take-years.html>> accessed 13 July 2015.

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possible benefits and demerits of publishing individual votes, I move away from administrative law to a brief examination of legislatures. Many legislatures have several types of votes: (1) secret voting, through anonymous ballots; (2) signal voting, where a signal such as yelling or holding up hands is used, but the individual vote is not recorded; and, (3) public voting, where the votes (and abstentions) of legislators is recorded and published.⁹² The strongest signal of a legislator's position on a particular issue is how they voted, and public knowledge of voting records is one way to enhance accountability to constituents.⁹³ Additionally, one could argue that since sporting organisations receive a significant amount of funding from the public purse, taxpayers should be able to demand accountability for the decisions individual IOC members that come from the country.⁹⁴ However, public voting might come with costs that outweigh the benefits. The highest cost is the potential for increased pressure from state government upon IOC members. Although IOC members represent the IOC to their home country, not vice-versa, a country may pressure 'their' IOC members to vote in a particular manner by reducing funding to various projects the IOC member is involved with, or if the IOC member is in a government-funded position, to remove them from the position. Similar tactics may be used by other organisations, whether sporting bodies, or commercial organisations to ensure that an IOC member 'votes the right way'. As an example, turning to football, England was scheduled to play a 'friendly' match against Thailand in June 2011. The match was initially scheduled in early 2010 as part of securing Thai FIFA Executive Committee member Worawi Makudi's vote for England's 2018 FIFA World Cup bid.⁹⁵ Hosting such a match would

⁹² John M. Carey, *Legislative Voting and Accountability* (Cambridge University Press 2009) 50.

⁹³ J.H. Snider, 'Would You Ask Turkey to Mandate Thanksgiving? The Dismal Politics of Legislative Transparency' (2009) 6 *Journal of Information Technology and Politics* 125, 128 ("Essential to the concept of representative democracy is that voters have ready access to the information necessary to monitor their elected representatives' actions. This is reflected in the widely used phrase that 'The legislature's business is the people's business.'").

⁹⁴ "The CSA [Canadian Soccer Association], which receives 18 per cent of its operating budget from the public purse, is also accountable to every competitive and recreational soccer player in this country who pays dues to one of its member organizations. Every soccer-playing kid and every soccer-playing kid's parent has the right to know where the CSA cast its votes [for the 2018/2022 FIFA World Cup host], where it stands, whom it backs." Stephen Brunt, 'Time for the CSA to Come Clean' *The Globe and Mail* (Toronto, 2 June 2011) <<http://www.theglobeandmail.com/sports/soccer/time-for-the-canadian-soccer-association-to-come-clean/article2045271/>> accessed 23 April 2015.

⁹⁵ For the 2018/2022 FIFA World Cup, twenty-two of the twenty-four members of FIFA's Executive Committee voted for the host (the other two, Amos Adamu and Reynald Temarii, were barred from voting due to corruption investigations).

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have likely been financially beneficial to the Thai football association, and a strong warm-up match prior to their upcoming FIFA World Cup qualifying matches. Following suspicions that Maukdi did not vote for England, as England received only two of twenty-two votes in the first round of voting, the match was cancelled.⁹⁶

The issue of public participation is more problematic than transparency. In many cases, there is little public participation at any time during the bidding process. Although some bids engage in various activities that allow the public to participate, these activities are often closer to the ‘providing information’ rather than the ‘decision-making’ end of the spectrum of public participation. The carrying out of opinion polls with a small sample size is certainly evidence of this.

What standard of public participation should be required is debatable. One emerging standard is obtaining ‘free, prior, informed consent’ from affected stakeholders. This standard has been used particularly in regards to decisions that affect the rights of indigenous persons.⁹⁷ Free, prior, informed consent is an example of a specific rule for a specific group of people, and illustrates how various standards of public participation may apply. While free, prior, informed consent is one way to obtain a significant amount of participation, applying that standard to all groups of people may be too onerous, given the time-sensitive nature of the Olympic Games, and the multitude of stakeholders that would need to be consulted

Another standard may require bid committees to engage in particular consultative actions. For instance, the IOC could require bid committees to engage in ‘notice-and-comment’ procedures that are typical in administrative law. The IOC has experience in engaging in such procedures in the lead-up to the XIII Olympic Congress in 2009, and Agenda 2020 in 2014, actively seeking the input of IFs, governments, and civil society. Similar to ‘notice-and-comment’, public consultations, such as those undertaken by Boston 2024 could be required. However, it cannot be guaranteed that the bid committees take into

⁹⁶ Paul Keslo, ‘World Cup 2018: England to Pull Out of Thailand Friendly in Protest, After Humiliating Bid Defeat’ *The Telegraph* (London, 3 December 2010), <<http://www.telegraph.co.uk/sport/football/teams/england/8180374/World-Cup-2018-England-to-pull-out-of-Thailand-friendly-in-protest-after-humiliating-bid-defeat.html>> accessed 23 April 2015.

⁹⁷ United Nations Declaration on the Rights of Indigenous Peoples, A/Res/66/142 (13 September 2007). A standard of consultation in good-faith has also been imposed in some states in regards to aboriginal persons. See *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44.

account the input when it comes to their decision-making. To prevent bid committees from simply ignoring the public input, ‘due account’ could be a standard required of the bid committees.⁹⁸ Such a standard would require the bid committees to provide documentation of what due account was given, either as part of a bid, or on the bid website.

5. Conclusion: Is The Host Selection Process the Problem?

This chapter has examined the IOC’s host selection process, and the procedural legitimacy of the process. The host selection process has a moderate degree of procedural legitimacy. It meets the basic requirements of decision-making, in that it is generally rational, consistent, and impartial. While there were concerns of corruption in the past, and while concerns of corruption will always haunt the selection processes of sports mega-events, there is no recent evidence of significant corruption within the IOC, and the IOC appears to be serious about addressing the problem of corruption in regards to the host-selection process. This can be seen, for example, in the decision as part of Agenda 2020 to continue to prohibit individual IOC members from visiting cities that are bidding to host the Olympic Games, despite the wishes of IOC members to lift the restriction.

However, the process tends to fall short when considering accountability mechanisms, namely transparency, participation, and review. In particular, the above analysis has shown that the IOC and the bid committees need to improve the transparency of and public participation in the host selection process. However, the changes to the host selection process are matters of degree, rather than a wholesale reformation of the entire process. While the cities and bid committees need to do more to ensure transparency and public participation, the IOC can help this process by requiring that the cities do so.

However, it is uncertain whether or not improvements in the host selection process will reduce the likelihood of the worst outcomes of the Olympic Games occurring. Improved transparency and public participation are likely to prevent practices such as forced evictions. This is currently being called for in regards to Boston’s bid for the 2024 Summer Olympics, less so for forced evictions, but to protect low-income tenants from

⁹⁸ See, e.g., Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998), art. 6(8).

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being evicted to make way for Games infrastructure, or forced out by landlords seeking to maximise short-term potential from the Games.⁹⁹ However, transparency and public participation are insufficient alone. As shown in Chapter Four, the host country needs to provide substantive protections, through legislation or regulation, for those at risk of harm due to the Games. The IOC also needs to participate by ensuring that the host provides such protections. Transparency and public participation are not necessarily going to help labourers who are not being paid, or halt environmental degradation on their own.

This chapter concludes the examination of the legitimacy of the IOC and the Olympic Games. Following the analysis of the last three chapters, the IOC and the Games appear to lack structural, substantive, and procedural legitimacy to varying degrees. The IOC falls short in structural legitimacy due to its nature as a self-selecting organisation that possesses high-immunity. The IOC and the Olympic Games currently lack substantive legitimacy because of the occurrences of the worst outcomes of the Olympic Games, and the Games not living up to their self-advertised legacy claims. Finally, the IOC and the Olympic Games have a deficit of procedural legitimacy, particularly because of a lack of participation in the planning process of bidding for and hosting the Games.

None of this is to label the IOC a ‘bad’ or ‘evil’ organisation, or to say that no city should ever host the Olympic Games. Instead, the purpose of examining the legitimacy of the IOC is to understand why the IOC and the Olympic Games may be facing a legitimacy crisis, as explained in Chapter Two. More importantly, this analysis serves as a basis for understanding what can be done to improve the legitimacy of the IOC and the Games. Although the IOC maintains its authority due to its status as a monopoly, the IOC would presumably have an interest in being perceived as a legitimate organisation, which would make it easier to exercise its influence and maintain its autonomy. One way in which the IOC can improve its legitimacy is to improve its accountability—and the accountability of those who organise the Games—the focus of the next two chapters.

⁹⁹ Jessica Robertson and Tim Reardon, ‘Putting Legacy First: Planning for the Boston 2024 Olympics’ (2015) 1, 12, 26–28.

Chapter Six

Assessing the Olympic Games Through a Principal-Agent Framework

1. Introduction

Chapters Two through Five examined the legitimacy of the IOC and the Olympic Games. Chapter Five in particular examined the host selection process, perhaps the only part of the Olympic Games under the direct and complete control of the IOC. The chapter found that accountability mechanisms were lacking, particularly in regard to public participation. Once the host is selected, the IOC delegates the organisation of the Games to other actors. This arrangement was introduced and briefly discussed in Chapter Three, where the variety of actors involved in the Olympic Games revealed a ‘problem of many hands’.

This chapter will examine the organisation of the Games in detail, with a focus on the roles of the particular actors. As the IOC delegates most of the duties regarding the Olympic Games to other actors, this Chapter will take a principal-agent approach to examining the issue. This approach fits within the theoretical frameworks used by this thesis. Principal-agent approaches are increasingly being used to inform studies of accountability generally.¹ In regards to global governance and global administrative law, administrative bodies, whether domestic or global, are often agents to a legislative or executive body (the principles). In this manner, principal-agent approaches have been used to examine administrative actors at both the domestic and the international level.²

¹ Sean Gailmard, ‘Accountability and Principal-Agent Theory’ in Mark Bovens, Robert E. Goodin and Thomas Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford 2014) 90.

² See, e.g., Darren G. Hawkins, David A. Lake, Daniel L. Nielson and Michael J. Tierney, ‘Delegation Under Anarchy: States, International Organizations, and Principal-Agent Theory’ in Darren G. Hawkins, David A. Lake, Daniel L. Nielson and Michael J. Tierney (eds.) *Delegation and Agency in International Organizations* (Cambridge University Press 2006) 5. For principal-agent approaches to administrative bodies at the domestic level, see Randall L. Calvert, Mathew D. McCubbins and Barry R. Weingast ‘A Theory of Political Control and Agency Discretion’ (1989) 33 *American Journal of Political Science* 588; Mathew D. McCubbins, Roger G. Noll and Barry R. Weingast, ‘Administrative Procedures as Instruments of Political Control’ (1987) 3 *Journal of Law, Economics, and Organization* 243. For principal-agent approaches applied to global administrative bodies, see

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Principal-agent approaches focus on problems where the agent drifts away from the mandate set out by the principal, a problem recognized in global administrative law.³ A principal-agent approach can also be useful when the administrative actor itself delegates its tasks to other actors. As mentioned in Chapter One, global governance bodies increasingly delegate their tasks to private actors. As such, principal-agent relationships are created between the global governance actor, and the (often, private) actors that are engaged in the actual tasks. The IOC *qua* global administrative body does not fit into the framework of being a global administrative body that is responsible to a principal of states or some broader constituency. However, it does fit the mould of a global governance actor delegating tasks to other actors.

This chapter moves away from analysing the legitimacy of the IOC to focusing on the accountability of the IOC and those who organise the Olympic Games. Particular focus will be on the accountability mechanism of review. In applying a principal-agent approach to examining the hosting of the Olympic Games, this chapter seeks to answer three questions. First, and this is a question addressed throughout this thesis, who should be held primarily accountable for the execution of the Games? Second, how does the IOC hold its agents accountable for their actions? Third, what substantive areas of human rights does the IOC set forth as mandates for its agents?

This chapter will proceed in the following manner. Part Two will outline the basics of the principal-agent approach, and how the approach may be applied to the Olympic Games. Part Three will evaluate the various mechanisms the IOC uses to control those who put on the Olympic Games, namely the host selection process, the Host City Contract, the IOC's Coordination Commission, and the Olympic Games Impact reports. Part Four will address a major critique of the principal-agent approach, and examine possible alternative explanations as to why the IOC cannot compel those who put on the Olympic Games to avoid the worst outcomes of the Games. Part Five will conclude.

Manfred Elsig, 'Principal-Agent Theory and the World Trade Organization: Complex Agency and 'Missing Delegation'' (2010) 17 *European Journal of International Relations* 495; Daniel L. Nielson and Michael J. Tierney, 'Delegation to International Organizations: Agency Theory and World Bank Environmental Reform' (2003) 57 *International Organization* 241.

³ Benedict Kingsbury, 'The Concept of 'Law' in Global Administrative Law' (2009) 20 *European Journal of International Law* 23, 35.

2. A Principal-Agent Approach to the Olympic Games

This part of the chapter will discuss how the principal-agent approach can be used to frame an examination of the actors involved in the Olympic Games. I will begin by introducing the principal-agent approach, and its underlying theoretical assumptions. I will then apply a simple principal-agent framework to the organisation of the Olympic Games. Particular attention will be paid to how the principal—the IOC—attempts to ensure that its agents carry out the Olympic Games to its standards.

2.1. Brief Introduction to the Principal-Agent Approach

A principal-agent relationship is created when an actor (the principal) enters into a contractual arrangement with a second actor (the agent) and delegates responsibility for performing a task or function on the principal's behalf.⁴ A simple principal-agent model involves a single principal delegating a single task to a single agent. As an example, I (the principal) might give \$100 to a friend (the agent) and ask them to purchase a concert ticket for me (the task) in exchange for me driving the two of us to attend the concert (the contractual consideration). The contract does not need to be a formal, written agreement. I could perform this delegation through a simple e-mail or text message, or orally.

Many principal-agent relationships are more complex than the above example. For instance, the actors involved may be complex actors. An international organisation is comprised of a general assembly of states representatives and a secretariat, amongst other elements.⁵ These particular sub-actors may have different interests, and work at cross-purposes. The IOC is comprised of the Session, the Executive Board, the Commissions, and the administration. The Session, Executive Board, and Commissions are made up of IOC members, and are likely to work with a relative unity of purpose, and this will be assumed to be the case when treating the IOC as a principal. In addition, while the agents examined in this chapter are arguably complex agents, they will be treated as unitary actors for ease of analysis. In addition to complex actors, there may also be multiple principals or multiple

⁴ Hussein Kassim and Anand Menon, 'The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?' (2003) 10 *Journal of European Public Policy* 121, 122.

⁵ Elsig (n 2) 498–500.

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agents. This is certainly the case with the Olympic Games, as the IOC delegates the organisation of the Games to three particular agents, who then engage in further delegation themselves.

The goal of a principal-agent approach is to explain situations where agents do not carry out their tasks in accordance with the mandate set out by the principal. This situation has been classified in various ways, but for my purposes, I will use the term ‘moral hazard’ in a general sense.⁶ Moral hazard describes the situation where the agent takes actions that are not in accordance with the wishes of the principal. These actions range from simply not performing the task at all (‘shirking’), to engaging in dishonest or corrupt activities, to engaging in risky behaviour.⁷ Returning to the concert ticket example, my friend (the agent) could simply abscond with the \$100 I have given him to buy the ticket. Or, perhaps they bought the ticket at a special price of \$50, but did not inform me of the discount, and keeping the remainder for themselves. Less sinister, they could simply forget to purchase the ticket.

Standard principal-agent approaches theorize that moral hazard occurs due to a misalignment of incentives between the principal and the agent.⁸ Absent incentives to behave otherwise, agents will behave opportunistically, fulfilling personal interests such as financial gain, avoiding unnecessary effort, and so forth. The principal may be able to realign the incentives through the threat of consequences for engaging in moral hazard. For example, my friend may balance the reward of buying discounted concert tickets and keeping the left-over money against the consequences of being caught. If I found out about my friend’s behaviour, I could impose a variety of potential consequences. I could turn to a court for redress. I could no longer offer my friend a ride to the concert, forcing them to find other means of transportation. I could tell other friends that we had in common about

⁶ Some authors differentiate between moral hazard (‘hidden action’) and adverse selection (‘hidden information’). See Gailmard (n 1) 92; Kassim and Menon (n 4) 122.

⁷ See Gary J. Miller, ‘The Political Evolution of Principal-Agent Models’ (2005) 8 *Annual Review of Political Science* 203, 204–05. See also Robert M. Wiseman, Gloria Cuevas-Rodríguez and Luis R. Gomez-Mejia, ‘Towards a Social Theory of Agency’ (2012) 49 *Journal of Management Studies* 202, 203; Daniel S. Mason, Lucie Thibault and Laura Misener, ‘An Agency-Theory Perspective on Corruption in Sport: The Case of the International Olympic Committee’ (2006) 20 *Journal of Sport Management* 52, 59–60 (for a principal-agent approach to the IOC and the Salt Lake City scandal).

⁸ Gailmard (n 1) 92; Thomas J. Doleys, ‘Member States and the European Commission: Theoretical Insights from the New Economics of Organization’ (2000) 7 *Journal of European Public Policy* 532, 537; McCubbins, et al (n 2) 247.

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my friend's dishonest activity, reducing the reputation of my friend. Some of these consequences are more likely to be effective than others, but they are all possibilities.

However, the problem with consequences is that they require the detection of malfeasance in the first instance. The agent may be able to successfully engage in morally hazardous behaviour due to information asymmetry between the parties.⁹ The principal is removed from the task due to the act of delegating, while the agent has on-the-ground knowledge. Thus, the principal is likely to be unaware of all of the activities of the agents. In the case where my friend bought the concert tickets at a discount, they may have been made aware of the discount at the point of purchase, or through an advertisement that I was not aware of. As a result, I would not have been able to detect the opportunistic behaviour of my friend, and then do not impose consequences.

Given the risks of moral hazard, why might a principal delegate in the first place? In the language of economics, delegation is often used to “minimize transaction costs”.¹⁰ This is a broad term that covers a variety of problems. For instance, a principal may want to use an agent who has specialist knowledge or local expertise that the principal lacks.¹¹ Or, perhaps, the principal wishes to shift the responsibility for decision-making to another actor who then might have to make unpopular decisions and take the responsibility for those decisions, shielding the principal.¹²

For the purposes of this thesis, I am using the principal-agency approach primarily as a framework to examine the relationship between the IOC and those that carry out the Olympic Games. Doing so allows for an examination of the substantive human rights standards used by the Olympic Games in a structured format. The approach follows three steps. First, I will determine the identities of the principal and agent(s). Second, I will examine the actions of the agent(s) that may negatively affect the principal. Third, I will

⁹ Kassim and Menon (n 4) 122; McCubbins, et al (n 2) 247.

¹⁰ Kassim and Menon (n 4) 123.

¹¹ Michelle Egan, 'Regulatory Strategies, Delegation and European Market Integration' (1998) 5 *Journal of European Public Policy* 485, 487–88.

¹² Morris P. Fiorina, 'Legislative Choice of Regulatory Forms: Legal Process or Administrative Process?' (1992) 39 *Public Choice* 33, 46–52.

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examine the mechanisms that the principal has in place to restrict the actions of agents and prevent moral hazard.¹³

2.2. The Olympic Games, Multiple Agents, and the Primacy of the OCOG

In the case of the Olympic Games, the IOC is the principal. It holds the rights to the Games, and is ultimately responsible for the regular organisation of the Olympic Games.¹⁴ The IOC delegates the hosting of the Games through the Host City Contract. Although the IOC may be considered to be a ‘complex principal’, as discussed above, it will be assumed to be a unitary principal for the sake of this analysis, and because it presents itself as such in the Host City Contract.

The Host City Contract entrusts the Olympic Games to multiple agents: the Host City, the host country’s NOC, and the OCOG.¹⁵ The OCOG is established by the Host City and the NOC after the signing of the Host City Contract, and is made a party to the contract afterwards.¹⁶ The OCOG’s governing board includes, *inter alia*, the IOC Members from the host country, the President/Secretary General of the NOC, a national athlete who has recently participated in the Olympic Games, and a representative of the city.¹⁷ The agents are likely to be complex agents, but are also treated as unitary agents for the ease of analysis. The Host City and OCOG in particular are likely to employ other parties, such as consultants or contractors, to assist them in carrying out their tasks, creating further principal-agent relationships. For ease of analysis, I will focus solely on those who are direct parties to the Host City Contract. The principal-agent relationship between the IOC and the NOC/Host City/OCOG may become more complex in the future as Agenda 2020 has opened up the possibility of additional parties being added to the Host City Contract as signatories “in line with the local context.”¹⁸

¹³ Sean Gailmard, ‘Accountability and Principal-Agent Theory’ in Mark Bovens, Robert E. Goodin and Thomas Schillemans (eds), *The Oxford Handbook of Public Accountability* (OUP 2014) 91.

¹⁴ International Olympic Committee, Olympic Charter (2014) Rule 2.3 (Olympic Charter).

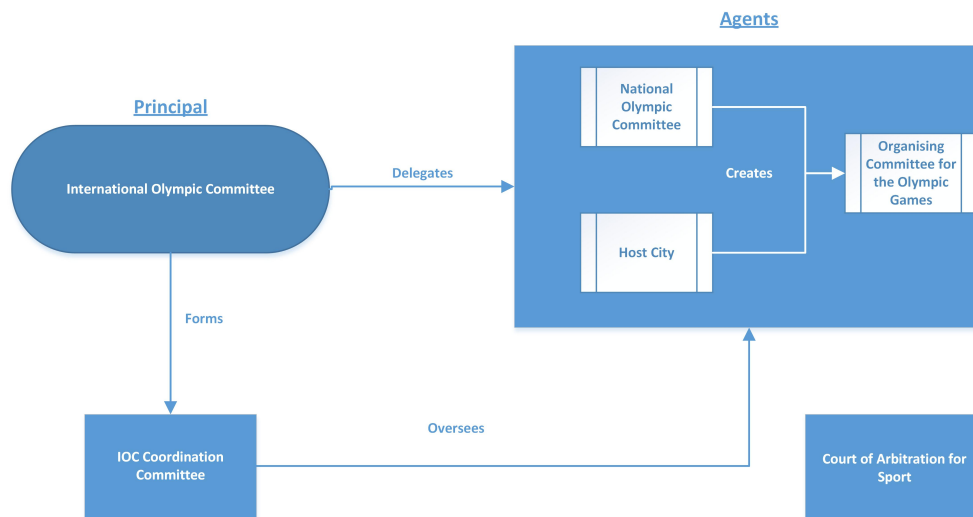
¹⁵ International Olympic Committee, Draft Host City Contract: Olympic Winter Games in 2022 (2014) art. 1 (Host City Contract).

¹⁶ *ibid* arts. 2, 3.

¹⁷ *ibid* art. 2.

¹⁸ International Olympic Committee, ‘Olympic Agenda 2020: Context and Background’ (2014) 15 (Agenda 2020).

Fig. 8 – Principal-Agent Relationship of the Olympic Games



As examined in Chapters Two and Four, the actions of the various agents (in addition to those of their sub-agents, and the host country), have the possibility to negatively affect the IOC. Some of the worst outcomes of hosting the Olympic Games include the use of forced labour, the displacement of persons (including forced evictions), and environmental harm. Although the Host City (and the host country) have positive legal obligations to prevent these harms, they may be complicit in causing these harms, or negligent in not protecting their citizens. Poor decisions on hiring contractors by the Host City and OCOG can also lead to these harms. However, when these harms come to light, attention turns towards the IOC as the head of the Olympic Movement, the public face of the Olympic Games, and as the organisation who elected to host the Games in the city in the first instance.

Given the problems that the agents create for the IOC, one might ask why the IOC would delegate the organisation of the Games in the first place. First, the IOC comes from a tradition of decentralisation, discussed in Chapters Two and Three, which influenced its

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founding in the Nineteenth Century.¹⁹ Second, the IOC is made up of a loose collection of individuals from around the world, with a small central bureaucracy. The IOC simply does not have the manpower to put on the Olympic Games in various cities around the world, and it is then in the interests of the IOC to lean on the local expertise and connections of those who are putting on the Games. Third, the Olympic Games can be conceived as an event that brings the global to the local, similar to the World's Fairs.²⁰ This conceptualisation of the Games has also been viewed as an attempt to impose the global upon the local, evoking the neoliberal critiques of the Games discussed in Chapters One and Four.²¹

2.3. Mechanisms of IOC Control Regarding Its Agents

Having set out the identity of the principal and agents, and how the actions of the OCOG and Host City negatively impact the IOC, this section will examine what measures the IOC uses to ensure its agents organise the Games to the IOC's standards: (1) the host city selection process, (2) the Host City Contract, (3) the IOC's Coordination Commission, and (4) the Olympic Games Impact reports ('OGIs').

2.3.1. The Host Selection Process

The host selection process, discussed in detail in Chapter Five, is the first mechanism the IOC uses to exert its control over its agents. First, the process sets out the IOC's expectations as to how the Games are to be conducted. Through the host city questionnaire, the IOC sets requirements that the aspiring host city should or must meet, and requires the host to undertake certain actions. Second, the questionnaire engages in information-gathering as to the plans of the potential host city. This function of the questionnaire reduces information asymmetry, enabling the IOC to make an informed judgement as to who should host the Games. Both of these roles are strengthened as the statements made by the bidding cities throughout the host selection process are considered to be binding by the

¹⁹ Dan Bousfield and Jean Michel Montison, 'Transforming an International Organization: Norm Confusion and the International Olympic Committee' (2012) 15 *Sport in Society: Cultures, Commerce, Media, Politics* 823, 826.

²⁰ Maruice Roche, *Mega-Events and Modernity: Olympic and Expos in the Growth of Global Culture* (Routledge 2000) 10.

²¹ See, e.g., Stephan A. Stuart and Teresa Scassa, 'Legal Guarantees for Olympic Legacy' (2011) 9 *Entertainment and Sports Law Journal* 22.

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IOC.²² While changes are often made to the plans of the Host City between the awarding of the Games and the actual Games themselves, large-scale changes require the permission of the IOC.²³

The host selection process has made attempts to address some of the most significant harms caused by the Olympic Games. For example, the IOC has a relatively long history of addressing environmental sustainability. The June 1991 Olympic Charter included an addition to the roles of the IOC to “see to it that the Olympic Games are held in conditions which demonstrate a responsible concern for environmental issues.”²⁴ As a follow-up, ‘environmental protection’ was added as a section of the host selection questionnaire as early as 1992, as part of the host selection process for the 2000 Olympic Games.²⁵ As of 1992, the IOC asked questions as to whether impact assessments has been carried out, indicate efforts to minimize ‘atmospheric pollution’ in regards to transport, and whether ‘ecological organisations’ had been consulted. As of 2013, the IOC asks bidding cities to provide the following information in the Applicant City stage on: (1) Games-specific environmental/sustainability actions they plan on implementing, and how they fit in with overall city and regional strategies; (2) environmental impacts and legacies of staging the Games; (3) whether environmental impact assessments have been carried out, and whether legislation requires such studies; and, (4) whether mitigation/compensation measures are required.²⁶ During the Candidate City stage, the IOC asks bidders to conduct “sustainability impact assessments” for the required venues and infrastructure “to screen

²² This statement is less applicable for Applicant Cities, but it certainly applies (and matters more) for the Candidate Cities. The IOC, in its Candidature Procedure, states multiple times that commitments made are binding. It goes even further in requiring a standard text guarantee from Candidate Cities that should include the a statement whereby the Candidate City “Understand(s) and agree(s) that all representations, warranties and covenants contained in the Candidate City’s bid documents, as well as all other commitments made, either in writing or orally, by either the Candidate City (including the Bid Committee) or its NOC to the IOC, shall be binding on the city.” *E.g.*, International Olympic Committee, 2022 Candidature Procedure and Questionnaire: XXIV Olympic Winter Games (2014) 216 (2022 Candidature Procedure).

²³ For instance, in February 2015, Tokyo received approval from the IOC to move the basketball, canoe-slalom, and equestrian venues, in an effort to save US\$1 billion through the use of existing venues. Stephen Wade, ‘Tokyo 2020 Olympics Have 3 Venue Changes Approved by IOC’ *Washington Times* (27 February 2015) <<http://www.washingtontimes.com/news/2015/feb/27/tokyo-2020-olympics-have-3-venue-changes-approved-/?page=all>> accessed 15 March 2015. See also, Host City Contract (n 15) art. 8.

²⁴ International Olympic Committee, Olympic Charter (June 1991) Rule 2.10.

²⁵ International Olympic Committee, *Part II Candidature File for the Olympic Winter Games or the Games of the Olympiad* (1992) 29.

²⁶ International Olympic Committee, 2022 Candidature Acceptance Procedure: XXIV Olympic Winter Games (2013) 58.

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potential environmental and social impacts and the risk of natural disasters,” and strategies taken to minimize greenhouse gas emissions.²⁷

‘Sustainability’ is a term often used by the IOC in regards to the organisation of the Olympic Games, and is an entire theme of the questionnaire given to Candidate Cities bidding for the 2022 Winter Olympic Games.²⁸ However, Olympic sustainability has been narrowly-conceptualised as environmental sustainability until recently.²⁹ For the 2016 Summer Olympic Games host selection process, which took place from 2007–2009, the IOC began to expand its conceptualisation of sustainability. In particular, it asked the bid committees about the sustainable sourcing of licenced products.³⁰ This question has evolved to encompass the provision of goods and services more broadly. As of 2014, the 2022 questionnaire asks the bid committee to:

...define and evaluate sustainability criteria in the sourcing of goods and services and in particular what steps will be taken to ensure that environmental, social and ethics factors (notably labour standards) are taken into account in the selection and on-going contract management of suppliers and licensees? Identify any national and/or international systems, tools or standards that may be applied in this regard.³¹

Following Agenda 2020, the IOC has further expanded its conceptualisation of ‘sustainability’.³² This 2022 host selection process has an entire section on ‘sustainability’, and adds three new questions relevant to this research. First, the IOC requires the bid committee to conduct “sustainability impact assessments” for “infrastructure developments required for the Games in order to screen potential environmental and social impacts...”³³ This question also requires the bid committee to identify projects that may require displacement of existing communities, and for the bid committees to “explain what procedures will apply and confirm these will be in accordance with national and/or

²⁷ 2022 Candidature Procedure (n 22) 80–81.

²⁸ *ibid* 79.

²⁹ Graeme Hayes and John Horne, ‘Sustainable Development, Shock and Awe? London 2012 and Civil Society’ (2011) 45 *Sociology* 749.

³⁰ International Olympic Committee, 2016 Candidature Acceptance Procedure (2007) 130.

³¹ 2022 Candidature Procedure (n 22) 81.

³² Agenda 2020 (n 18) 4.

³³ 2022 Candidature Procedure (n 22) 80.

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international standards.”³⁴ These assessments are to be prepared for the IOC Evaluation Commission during its site visit. Second, the IOC asks the bid committees to provide:

Guarantee(s) stating that all venue construction and infrastructure development necessary for the organisation of the Olympic Games will comply with:

- Local, regional and national regulations and acts
- International agreements and protocols

With regard to planning, construction, protection of the environment, health and safety and labour laws.³⁵

Third, the IOC asks bidders to “indicate any special features or initiatives which are not covered by this questionnaire, and which the Bid Committee believes are relevant.”³⁶ These questions in the host selection process are evidence of the IOC beginning to address human rights issues as part of the hosting of the Olympic Games, and puts the hosts on notice that more is expected of them than in the past.

2.3.2. Host City Contract

The second mechanism that the IOC uses to limit the discretion of its agents is the Host City Contract. First and foremost, the Contract sets out the formation of one of the agents, the OCOG. Second, similar to the host selection process, the Host City Contract outlines the mandate of the agents. Various obligations are set out, such as setting up a cultural programme, or organizing the torch relay.³⁷ The important obligation of the agents for this thesis, introduced in the 2022 edition of the Host City Contract, is the section on “Sustainable Human and Environmental Development.” The language in this section mirrors the host selection process discussed above, requiring the agents to carry out the Games:

...in a manner which embraces the concept of sustainable development, and which serves to promote the protection of the environment. In particular, the concept of sustainable development shall address the

³⁴ *ibid* 80.

³⁵ *ibid* 81.

³⁶ *ibid*.

³⁷ Host City Contract (n 15) arts. 36, 38.

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legacy of the Games, including the concerns for post-Olympic use of venues and other facilities and infrastructures, referred to in Section 36 below. The City, the NOC and the OCOG shall take all necessary measures to ensure that development projects necessary for the organisation of the Games comply with local, regional and national legislation and international agreements, standards and protocols, applicable in the Host Country with regard to planning, construction, protection of the environment, health and safety and labour laws.³⁸

Finally, in addition to setting out the mandate for the agents, the Host City Contract also provides for consequences in the event the agents do not live up to the IOC's requirements. In terms of legal liability, the agents are jointly liable for the Games, and the IOC is to be indemnified by these agents in the event of legal action against the IOC.³⁹ In terms of consequences meted out by the IOC, in the event of "a violation by the City, the NOC or the OCOG of any material obligation pursuant to this Contract, the Olympic Charter or any applicable law", the IOC is entitled to terminate the Host City Contract, and withdraw the right to host the Games from the Host City.⁴⁰ The removal of the Games is the only consequence provided for in the Host City Contract. In case of a dispute, the parties can avail themselves of the CAS, and if the CAS refuses jurisdiction, then they may resort to the Swiss Federal Tribunal.⁴¹ In either case, Swiss law would apply.⁴²

Frequently referenced in the Host City Contract, and considered integral to the Contract by the IOC, are a series of 'technical manuals'. These manuals cover a variety of operational aspects of the Games, such as accommodation, digital media, transport, or organising the Olympic torch relay. These manuals have been confidential, but may be made public in the same vein as the Host City Contract following Agenda 2020. The technical manuals appear to address the concerns of this research in only a tangential manner. The most relevant aspect is the technical manual on workforce, which requires the OCOG to:

³⁸ *ibid* art. 21.

³⁹ *ibid* arts. 4, 10.

⁴⁰ *ibid* art. 66a. *See also* Olympic Charter (n 14) Rule 36.

⁴¹ Host City Contract (n 15) art 87.

⁴² *ibid*.

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...conduct an analysis of the labour laws/awards/conditions and the impact that the Olympic Games will have on these and what legislative changes, if any, need to be made. The OCOG shall ensure that all necessary steps are taken by the appropriate authorities to ensure that the required legislation is enacted and inform the IOC of their progress.⁴³

2.3.3. IOC Coordination Commission

The third mechanism that the IOC uses to keep a rein on its agents is the IOC's Coordination Commission. A unique Coordination Commission is created by the IOC for each edition of the Games. The Commission is set up by the IOC President, and is made up of about a dozen members who represent the IOC, IFs, NOCs, and athletes—in other words, the core members of the Olympic Movement.⁴⁴

The mandate of the Coordination Commission includes, *inter alia*, liaising between the IOC/IFs/NOCs and the host NOC/Host City/OCOG Host City; monitoring the progress of the OCOG; inspecting competition, training, and other facilities; establishing specialized Working Groups (with the approval of the IOC Executive Board); and carrying out a post-Games analysis.⁴⁵ The Coordination Commission meets (primarily) with the OCOG once per year for the first few years of preparation, and then beginning four years prior to the Games, meets twice per year.⁴⁶ This particular Commission is perhaps best-known to the public for their post-inspection briefings. During these briefings, members of the Commission report on the progress of Games preparations, often praising the OCOG for the progress that they have made, and lauding the positive benefits that the Games are expected to bring to the host city. However, the Commission is also known to warn the OCOG and public authorities about tight timelines and to express their concerns over particular issues.⁴⁷

⁴³ International Olympic Committee, 'Technical Manual on Workforce' (2005) 28; International Olympic Committee, 'Technical Manual on Workforce: 5th Update Cycle – Post Vancouver Winter Games', 117.

⁴⁴ *ibid* art. 27; Olympic Charter (n 14) Rule 37.

⁴⁵ *ibid* Bye-Laws to Rule 37.

⁴⁶ International Olympic Committee, Coordination Commissions for the Olympic Games (accessed 24 February 2015) www.olympic.org/coordination-commissions?tab=mission.

⁴⁷ For example, this occurred during a post-inspection briefing regarding the 2016 Summer Games in Rio de Janeiro in 2012. International Olympic Committee, 'IOC Coordination Commission Concludes Third Visit to Rio' (*Olympic.org*, 07 June 2012) <<http://www.olympic.org/news/ioc-coordination-commission-concludes-third-visit-to-rio/166505>> accessed 04 June 2015.

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2.3.4. Olympic Games Impact Reports

The fourth mechanism that the IOC uses to govern how the Olympic Games are executed is the Olympic Games Impact reports. The OGIs in their present format were first formally required for the 2010 Vancouver Winter Olympic Games,⁴⁸ although used to varying degrees in prior editions of the Games. The OGIs are a series of four individual reports, which examine the impact of the Olympic Games over a twelve-year period. These reports examine the state of the host city two years prior to its selection, during the pre-Games period, during the period of the Games, and three years' post-Games.⁴⁹ The purpose of the OGIs is to “develop an objective and scientific analysis” of the impact of each edition of the Olympic Games, fulfilling the IOC’s twin goals of: (1) ensuring that the Olympic games are held in a sustainable manner (with a focus on the environment), and (2) “promot[ing] a positive legacy” from the Olympic Games in the host city.⁵⁰

The OGIs examine the host city using a plethora of indicators. These indicators are divided into environmental, economic, and socio-cultural categories. Indicators that are relevant to this research include:

Environment: water quality; air quality/greenhouse gas emissions; land use/biodiversity; energy consumption; waste/wastewater; and sustainable sourcing;

Economic: jobs created;

Socio-cultural: political social and legal apparatus (e.g., votes held, laws passed, pressure groups existing); public opinion/consultation; promotion and participation of minority groups.⁵¹

The OGI for the 2010 Winter Games is the only one as of this writing to address the post-Games timeframe. This report, published in 2013, lamented the lack of post-Games data for many areas of the final report. It is unknown whether this will be a common concern for

⁴⁸ University of British Columbia, *Olympic Games Impact (OGI) Study for the 2010 Olympic and Paralympic Winter Games: Post-Games Report* (Oct. 23, 2013) 5.

⁴⁹ *ibid* 63–64.

⁵⁰ International Olympic Committee, ‘Technical Manual on Olympic Games Impact’ (2009) 22.

⁵¹ *ibid* 25–31; University of British Columbia (n 48).

OGIs going forward. However, the IOC has since made monitoring of the post-Games legacies a recommendation in Agenda 2020.⁵²

3. Evaluation of IOC Mechanisms

Using a principal-agent approach, the above mechanisms used by the IOC to exercise control over its agents are put into a framework for analysis. Accountability mechanisms are often considered as an *ex post* action.⁵³ Adhering to (or violating) previously-agreed upon standards, which necessitates consequences, has an after-the-fact, remedial quality. Yet, considering the definition of accountability in Chapter One, accountability mechanisms also include the *ex ante* setting of standards and processes that, if adhered to, should improve overall outcomes.⁵⁴ Generally speaking, mechanisms used by a principal to ensure compliance on the part of its agents can be classified into three categories: (1) *ex ante* mechanisms that set out the scope of the agent's duties, (2) on-the-spot monitoring mechanisms, and (3) *ex post* mechanisms where consequences follow for deviance from the mandate.⁵⁵ This part of the chapter will place the IOC's four mechanisms within these classifications, and examine whether or not they are likely to be effective in ensuring that the NOC, the OCOG, and the Host City prevent the worst outcomes of the Games from occurring.

3.1. *Ex Ante* Mechanisms

Mechanisms that are *ex ante* can generally be conceived of as those that set out the mandate of the agent. In the case of the IOC and the Olympic Games, *ex ante* mechanisms include the host selection process and the Host City Contract.

When setting out a mandate, a principal can broadly choose between setting rules for the agent to follow, or standards for the agent to meet. Rules set out specific behaviour

⁵² Agenda 2020 (n 18) 23.

⁵³ Krisch (n 57) 16–17.

⁵⁴ Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 European Law Journal 447, 453.

⁵⁵ Elsig (n 2) 498. See also, Kassim and Menon (n 4) 124.

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ex ante, generally with a hard empirical trigger.⁵⁶ As such, they limit discretion on the part of the agent, even if the discretion would benefit the project as a whole. Rules also require knowledge on the part of the principle as to the task to be performed.⁵⁷ Returning to the concert ticket example from above, I would require my friend to purchase the concert ticket for a particular seat as I believe that particular seat offers me the most enjoyment, the best view, etc. Perhaps the friend knows of an option to purchase seats that are similar, but are much cheaper in price due to a partially-obstructed view, or because of some promotion. However, that friend is barred from purchasing those seats, or may have to take time to inform me of the new options. They could simply exercise the discretion to purchase the discounted tickets anyways, but with the risk that I would not accept the tickets and would demand my money back. In contrast to rules, standards specify a goal to be achieved, but use a soft, evaluative trigger.⁵⁸ Determinations of acceptable behaviour are often made *ex post*.⁵⁹ Agents thus have more discretion when operating under standards, and a principal can delegate with less prior knowledge. For instance, I might tell my friend that I want to have a good view of the performers, or be close to the aisle. Therefore, my friend can balance out the requirements, and aim to purchase a cheaper ticket, or purchase a ticket that would also align with their interests (perhaps they prefer balcony seating as opposed to floor seating). This example creates a series of questions that must be evaluated. What is a 'good view'? Directly in front of the stage at ground level? High up in the rafters, where one can see the entire stage? There is a risk that I, as the principal, will not actually get what I want.

Rules and standards impose costs on the principal at different points of the transaction. Rules impose higher costs on the principal at the time of promulgation than standards, because the principal needs to determine precisely which conduct is acceptable. Standards impose costs on monitoring and enforcement than rules, as determinations need to be made whether the conduct was acceptable or not.⁶⁰ Of course, delegation is often not

⁵⁶ Pierre Schlag, 'Rules and Standards' (1985) 33 UCLA Law Review 379, 382–83.

⁵⁷ Louis Kaplow, 'Rules Versus Standards: An Economic Analysis' (1992) 42 Duke Law Journal 559, 560.

⁵⁸ Schlag (n 56) 383.

⁵⁹ Kaplow (n 57) 560.

⁶⁰ *ibid* 562.

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made using a ‘pure’ rule, or a ‘pure’ standard, but often a mix of both.⁶¹ I would ask my friend to purchase tickets that are balcony seats (rule), close to an aisle (standard), with a good view (standard), for less than \$100 (rule).

In organising the Olympic Games, the IOC relies on a mixture of rules and standards in setting out the mandate of the NOC/OCOG/Host City. For the purposes of this research, the IOC relies more on standards when it comes to issues such as environmental protection, or social sustainability.⁶² When considering environmental protection, the IOC largely engages in information gathering. Even when it comes to particular actions required by the IOC, namely conducting impact assessments, the IOC does not appear to specify what is required as part of the impact assessments. The IOC’s Technical Manual on Venues also grants a great degree of discretion to the host cities. While the IOC appears to push host cities towards various practices (e.g., not building venues in protected areas, but using brownfields, considering ‘green’ buildings, considering some temporary venues), the choice is still largely up to the host city.⁶³

The IOC’s requirement of a guarantee that venue construction and infrastructure development will comply with domestic and international regulations, the requirement does not specify which particular laws or standards are to be complied with. It also does not provide guidance on what happens if domestic laws conflict with regional or international agreements. What precisely would constitute a breach of this guarantee is thus unclear. On the one hand, it is likely that a wage-and-hour complaint by an employee of a contractor working on the Olympic Village is technically a breach of the article, but is not likely to be treated as such by the IOC. On the other hand, would a persistent stream of wage-and-hour claims be a breach? It is unknown.

Merely incorporating standards that require adherence to labour rights and information on remedies for displaced persons is a significant step for the IOC following Agenda 2020. However, the question begs to be asked: is this standard likely to be effective in ensuring that the IOC’s agents protect human rights during preparations for the Games?

⁶¹ *ibid* 561.

⁶² Ryan Gauthier, ‘Olympic Game Host Selection and the Law: A Qualitative Analysis’ (2016) 23 *Moorad Sports Law Journal* (forthcoming).

⁶³ International Olympic Committee, ‘Technical Manual on Venues: 5th Update Cycle – Post Vancouver Winter Games’ 42–44.

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Perhaps too much discretion has been granted. First, consider the standard of compliance with national law. National laws and regulations can be changed, particularly so in advance of the Games. Changes in national laws may actually be made to undermine the rights that should be protected. For instance, Olympic-related projects were exempted from environmental impact assessments prior to the 2000 Sydney Summer Olympic Games.⁶⁴ By not performing environmental impact assessments, the government did not violate its own laws, and the standard is technically met. In 2014, Russia passed legislation to support the FIFA World Cup, which addressed migrant workers who would work on World Cup facilities. The law states that migrant workers are no longer required to register with local authorities—which reduces the government’s ability to ensure that these workers are not taken advantage of by companies—and cannot obtain social security benefits.⁶⁵ The IOC prohibits changes in laws that might inhibit the carrying out of the Games,⁶⁶ but these laws may not be seen to rise to that standard as they may actually facilitate preparations for the Games—although at a great cost to human rights.

Perhaps the reason the IOC uses standards instead of rules in regards to environmental and social sustainability is to allow for countries that do not yet have robust human rights protections to still host the Games, yet serves notice that the IOC expects hosts to respect fundamental human rights. This comports with the notion that the Games are being awarded to hosts that are not yet capable of hosting such events, but are ‘becoming capable’, discussed in Chapter Three. To date, only two bidding cities have had to address this question in their bid, the 2022 bidding cities of Almaty and Beijing. How did these two cities respond to the IOC’s requirement in their bids? The Almaty bid states the following:

The Government of Kazakhstan is responsible for supervising the environmental policies to ensure compliance with domestic laws and

⁶⁴ Pietro Caratti and Ludovico Ferraguto, ‘The Role of Environmental Issues in Mega-Events Planning and Management Processes: Which Factors Count?’ in Graeme Hayes and John Karamichas (eds), *Olympic Games, Mega-Events and Civil Societies: Globalization, Environment, Resistance* (Palgrave Macmillan 2012) 115.

⁶⁵ O podgotovke i provedenii v Rossijskoj Federacii čempionata mira po futbolu FIFA 2018 goda, Kubka konfederacij FIFA 2017 goda i vnesenii izmenenij v otdel’nye zakonodatel’nye akty Rossijskoj Federacii [On the Preparation and Conduct of the Russian Federation 2018 FIFA World Cup, 2017 FIFA Confederations Cup and Amendments to Certain Legislative Acts of the Russian Federation] June 7, 2013, FZ-108 (Russia).

⁶⁶ Host City Contract (n 15) art. 72.

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international agreements and protocols. In this regard, please refer to the guarantees file for the signed guarantees.

Pursuant to environmental regulations, the City of Almaty has the authority and responsibility for environmental protection in the Olympic territory. Confirmation has been forthcoming in this context that construction work for the Almaty 2022 Games will comply with local, regional and national environmental regulations and legislation as well as international agreements and protocols regarding planning, construction, protection of the environment, health and safety and labour laws.

...

Compliance with all relevant environmental regulations is an obvious imperative. Similarly, the criteria to meet the protection of human and labour rights will be strengthened.⁶⁷

The Beijing bid reads:

In order to ensure the sustainability of Beijing 2022, the following public authorities have made commitments in Letters of Guarantee 5.1 – 5.4.

...

Minimise the potential negative social impact of the supply chain. Protect the rights of labourers, respecting their dignity and prohibiting employment discrimination;

...

Sustainability evaluation of tender: Evaluate and define the sustainable suppliers by taking into account the indicators of product sustainability, supplier sustainability, and environmental impact as well as various economic, social and environmental criteria.⁶⁸

These bids do not provide much information on how the sustainability goals are to be achieved. This is understandable, given the limited space provided in the bids. Many questions are answered in a cursory manner.⁶⁹ It is also possible that these bids are vague

⁶⁷ Almaty 2022, Candidate City, 61.

⁶⁸ Beijing 2022, Candidate City, 63.

⁶⁹ Gauthier (n 62).

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in their responses, as these bids are answering the question for the first time, and are unable to copy what prior, successful bids, answered.⁷⁰ The IOC's Evaluation Commission responded that "Taking into consideration the open nature of the discussions and the assurances provided" that it believed the bidders would "take all necessary measures to ensure the Olympic Charter and the Host City Contract are respected."⁷¹ But, the Commission also cautioned that "the IOC has to respect the laws of a sovereign state."⁷²

Whether or not the IOC itself takes the mandate seriously is also doubtful. Following the IOC Evaluation Commission's visit to Beijing during the 2022 bidding process, Chinese IOC Member Yang Yang responded to criticism of China's human rights records by stating that the Olympic Charter only has one sentence about human rights, namely "that participation in the Olympic Movement is a basic human right."⁷³ This reference to the Charter, ignoring the bidding requirements and the Host City Contract seems to indicate a clear hierarchy of values, at least in the mind of one IOC member. But, if IOC members do not take the bid commitments or the Host City Contract language seriously, why would the hosts?

The IOC has made a significant positive step forward with the implementation of social sustainability requirements following Agenda 2020. This has created a situation where bidders can no longer claim ignorance about or inapplicability of human rights and other social concerns to the Olympic Games, although as seen with China's 2022 bid, this has not stopped them from trying. However, the mandates set by the IOC may allow for too much discretion on the part its agents, and leaves significant loopholes in precisely what standards apply. The IOC's history of failing to ensure that Sydney complied with environmental sustainability requirements for the 2000 Olympic Games also gives reason to suspect that the mandates will not be robustly monitored and enforced by the IOC.

⁷⁰ Caitlin Pentifallo and Rob VanWynsberghe, 'Blame it on Rio: Isomorphism, Environmental Protection and Sustainability in the Olympic Movement' (2012) 4 *International Journal of Sport Policy and Politics* 427.

⁷¹ International Olympic Committee, Report of the 2022 Evaluation Commission (2015) 26, 73.

⁷² *ibid* 26, 72.

⁷³ Robert Livingstone, 'Beijing 2020 Defends Against Human Rights Critics' (*Gamesbids*, 24 March 2015) <<http://gamesbids.com/eng/winter-olympic-bids/2022-olympic-bid-news/beijing-2022-defends-against-human-rights-critics/>> accessed 04 June 2015.

3.2. On-The-Spot Monitoring Mechanisms

To avoid significant *ex post* enforcement costs, a principal may employ a monitoring mechanism to keep an eye on its agent and detect morally hazardous activities. However, monitoring mechanisms may have a cost to the principal in time, personnel, money, or other resources. If the cost of monitoring is too high, it puts into the question the need to delegate in the first place. A monitoring mechanism is most effective when it can provide an objective assessment of the situation, and can also provide timely monitoring, so that the principal can induce the agent to correct their actions. In the case of the Olympic Games, the IOC uses two monitoring mechanisms: the Coordination Commission, and the OGIs.

A significant concern with the Coordination Commission is its makeup. The Commission is comprised of members from the Olympic Movement, and primarily of IOC members. Many IOC members have sporting backgrounds, and many have professional training and experience as lawyers, businesspersons, and so forth. However, it is unlikely that these members have experience in issues such as environmental impact assessments, or assessing labour conditions. The task of ensuring that the agents do not take actions that lead to the worst outcomes of the Games is thus left to non-experts. Of course, there is much more to monitor than whether or not the agents are respecting their mandate of sustainability. For instance, the Coordination must inspect as to whether the sporting facilities are up to standard, that the transit system is effective, that the OCOG has planned a sufficient cultural component for the Olympic Games, and so forth. It is certainly unlikely that the Coordination Commission members are experts in all these areas as well. However, the question remains as to why the IOC does not seek external advice and expertise (or at least does not do so more openly). Having an arms-length committee examine the Games may increase the objectivity of assessments, but also increase the transparency of the hosting preparations for the Games.

The Coordination Commission has not proven, at least publicly, that it is a mechanism that can detect and remedy the worst outcomes of the Games. NGOs or news outlets often reveal evidence of violations of human rights or environmental damage. Since NGOs and news outlets are ‘on the ground’, while the Coordination Commission makes a

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site visit once or twice per year, this is a logical outcome. However, this again begs the question of why not engage with these external actors in a formal capacity.

3.3. *Ex Post* Mechanisms

A component of accountability is the ability of the accountability forum to impose consequences upon actors. As discussed in Chapter One, I use the word consequences instead of sanctions because consequences encompass both rewards and punishments, while sanctions are solely punitive. In a principal-agent approach, a concern with consequences is ensuring that they are large enough to offset the potential benefit that the agent would obtain from engaging in moral hazard.⁷⁴ The *ex post* mechanisms used by the IOC are found in the Host City Contract. First, I will consider the procedure in regards to consequences before moving on to the substance of the consequences.

The IOC is entitled to terminate the Host City Contract and withdraw the Olympic Games under certain circumstances, including if “there is a violation by the City, the NOC or the OCOG of any material obligation pursuant to this Contract, the Olympic Charter or any applicable law.”⁷⁵ In terminating the contract, the IOC shall give the agents sixty days to remedy the condition, or less if the Opening Ceremonies of the Olympic Games are less than 120 days away.⁷⁶ In remedying the situation, the agents need to meet the “reasonable satisfaction” of the IOC. In the case of the termination of the contract, the agents waive any right to compensation (damages, indemnity, etc.) from the IOC, and agree to indemnify the IOC in regards to any third-party claims that arise from the termination of the contract.⁷⁷

This procedural set-up could be modified in two ways that may make it more robust. First, the IOC appears to have a significant degree of discretion in determining whether or not to impose consequences upon the agents. This may lead to a problem of the IOC consistently imposing consequences and being a ‘difficult principal’. However, this is not likely to be the case, given the historical record of the IOC, discussed below. More likely is the situation where an agent has breached the contract, but the IOC does not want

⁷⁴ McCubbins, et al (n 2) 251.

⁷⁵ Host City Contract (n 15) art. 66a.iv.

⁷⁶ *ibid* Art. 66b.

⁷⁷ *ibid* Art. 66c.

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to impose the consequences upon the agent. This then presents a case of a principal that is complicit in the moral hazard of the agent. This problem is addressed in-depth in Chapter Seven. However, one potential consideration to mention here would be to remove some discretion from the IOC, and make the consequences contingent on the finding of an external organisation, such as a court, or another body. A second way the consequences could be modified to be more effective is to consider the issue of timeliness. While the removal of the Games perhaps works as a consequence for pre-Games issues, it does not address post-Games concerns. For instance, environmental problems may not arise until years after the Games. Yet, it appears that once the Games are complete, the obligations under the contract are fulfilled, and there is no further recourse to consequences.

As to the substance of the consequences for non-compliance, the sole formal consequence is that IOC can withdraw the right to host the Games.⁷⁸ At first glance, this consequence would appear to be effective. The NOC/OCOG/Host City would not wish to violate the conditions in the Host City Contract, lest they lose the Games altogether, receive no compensation from the IOC, and be known as the ‘city that failed to host the Olympics’. However, studies on consequences have shown that to be effective, consequences must be perceived by the target as certain to happen.⁷⁹ In other words, the threat of a consequence must be credible. In assessing the credibility of the threat to remove the Games, I will examine whether the IOC has done so before (and therefore, whether they might do so again), and what the costs to the IOC and the agents might be.

First, the IOC has only withdrawn the right to host the Games due to the outbreak of the First and Second World Wars—where the Games were cancelled outright. However, cities have forfeited the right to host the Olympic Games. For instance, Tokyo and Sapporo forfeited the right to the 1940 Summer and Winter Games due to Japan’s war in East Asia.⁸⁰ Denver forfeited the right to host the 1976 Olympic Winter Games following a public referendum where citizens of Colorado voted against providing any more funding

⁷⁸ *ibid* Art. 66a.

⁷⁹ *See, e.g.*, Lisa L. Martin, ‘Credibility, Costs, and Institutions: Cooperation on Economic Sanctions’ (1993) 45 *World Politics* 406.

⁸⁰ International Olympic Committee, ‘Proces-Verbal de la Réunion de la Commission Exécutive, le 3 September 1938, à Bruxelles’ (Brussels, September 1938) 1.

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for the Games.⁸¹ The Games were then moved to Innsbruck, Austria following a vote by the IOC's Executive Board.⁸² Absent truly exceptional circumstances, the IOC appears unwilling to withdraw the rights to host the Games.

Second, the withdrawing of the right to host the Games would impose high costs on the Host City, but also on the IOC. First, the IOC could face costs associated with moving the Games. It is unlikely that the IOC would simply cancel the Games, but would move the Games to a city that recently hosted the Olympics or another sports mega-event. This strategy would allow for the minimization of costs by using existing infrastructure. However, recent hosts have attempted to construct many of their sporting facilities as temporary venues, either deconstructing them or converting them into alternative uses shortly after the Games in an effort to improve the sustainability legacy of the Games and reduce the presence of 'white elephants' (sporting facilities that are under-utilized), an approach that the IOC encourages.⁸³ This attempt to improve the sustainability of the Olympic Games may prevent the IOC from moving a Games on short-notice to a new host city, should the circumstance arise. A second cost to the IOC would be claims from broadcasters and sponsors seeking compensation for extra costs incurred as a result of moving the Games. However, these costs are likely considered in the contracts between these actors and the IOC, and are unlikely to be crippling to the IOC.

Perhaps the most significant cost to the IOC would be reputational harm. If the IOC removed the Games due to the worst outcomes coming to pass, the IOC would likely rely on violations of the "Sustainable Human and Environmental Development" clause of the Host City Contract. However, doing so might lead the IOC to face allegations from the

⁸¹ The citizens of Colorado voted on a referendum in 1972, enacting a state constitutional amendment, prohibiting the state from "levying taxes and appropriating or loaning funds for the purpose of aiding or furthering the 1976 Winter Olympic Games. The ballot initiative was passed with a vote count of 514,228—350,964, or 59.4% to 40.6%. Colorado General Assembly, Ballot History, "An Act to Amend Articles X and XI of the State Constitution to prohibit the State from levying taxes and appropriating or loaning funds for the purpose of aiding or furthering the 1976 Winter Olympic Games." Ballot Number 8 (1972) *available at* <http://www.leg.state.co.us/lcs/ballothistory.nsf/eca945d0db42993087257012006d09c2/185275e7a6d5715787256ffd006a4944?OpenDocument>. *See also* Colo. Const. art. XI, § 10 (repealed 1991).

⁸² International Olympic Committee, 'Minutes of the Meeting of the Executive Board of the I.O.C.' (Lausanne, February 1973) 29.

⁸³ International Olympic Committee, 'Olympic Games Framework: Produced for the 2024 Olympic Games' (2015) 59 ("The use of existing facilities and temporary and demountable venues should be maximised...Any decision to build new permanent facilities should be made responsible, with a focus on long-term, post-Olympic Games demand.").

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host country that the Games were being used for political reasons, a charge that the IOC has fought for decades. In addition, the credibility of the host selection process would be reduced, as the perception would be that the process could not reasonably assess the risks of the potential host cities, and create a perception that the IOC is incompetent (or, even worse, corrupt). This risk of reputational loss makes it unlikely that the IOC would remove the right to host the Games on the grounds of a violation of the “Sustainable Human and Environmental Development” clause of the Host City Contract. As such, the threat of this particular consequence being levied against the NOC/OCOG/Host City is low.

Instead of formal consequences, the IOC is more likely to use informal consequences to obtain compliance by its agents. As mentioned above, the Coordination Commission singles out the agents for negative elements in their preparations for the Olympic Games. However, this is often done as a last resort, as the IOC praised Rio de Janeiro’s preparations for the Games at the same time that thousands of dead fish were found in Guanabara Bay, home of the proposed sailing venue for the 2016 Games.⁸⁴ One year later, the IF for sailing publicly expressed their frustration, and are only now seeking alternative venues, less than a year before the Games.⁸⁵ This is a situation that directly impacts athletes, which should be of central concern to the IOC. If the IOC does not address problems that affect the conduct of the Games themselves, it is less likely to do so when confronted with the worst outcomes of the Olympic Games. For instance, following the 2008 Beijing Olympic Games, the Coordination Commission stated in its Final Report: “To those who have criticised the IOC on human rights issues, one can argue that the Games have elevated international dialogue on such issues among governments, world leaders, politicians, NGOs and pressure groups.”⁸⁶ The remainder of the section only addresses the Olympic brand.

⁸⁴ ‘Rio 2016: IOC Happy With Olympic Preparations – As Dead Fish Found’ (*BBC News*, 25 February 2015) <<http://www.bbc.com/sport/0/olympics/31634014>> accessed 15 July 2015.

⁸⁵ Rio 2016 Sailing Events Could be Moved from Polluted Guanabara Bay’ *The Guardian* (London, 24 April 2015) <<http://www.theguardian.com/sport/2015/apr/24/rio-2016-olympic-sailing-polluted-guanabara-bay>> accessed 15 July 2015.

⁸⁶ International Olympic Committee, *Final Report of the IOC Coordination Commission, Games of the XXIX Olympiad, Beijing 2008* (2010) 32.

4. Alternative Theoretical Explanations for Agency Problems

4.1. Critiques of the Principal-Agent Approach

At its heart, the principal-agent approach is an economics approach, with a goal of producing an efficient outcome for the principal.⁸⁷ Rectifying misaligned incentives and information asymmetry are simply attempts to reduce inefficiencies in the market. Traditional economic thought presupposes that actors are rational economic actors, acting in their own best interests. However, these assumptions have been challenged in recent years, and are certainly challenged through an examination of the Olympic Games.

At their core, the Olympic Games are not designed to be an efficient economic activity. First, the Games are an ambulatory event. If the Games were efficient, they would be held at a permanent site—a solution that is often suggested whenever a contemporary host faces problems with organising the Games.⁸⁸ However, the ambulatory nature of the Games fulfils an ideal, with its roots in the late Nineteenth Century, of encouraging athletes and spectators to experience and understand other cultures, similar to the World's Fairs.⁸⁹ Selecting a new city each time also allows a city to prepare state-of-the-art sporting infrastructure for each addition, which is an inefficient activity. Second, the host selection process itself is inefficient. If the IOC wanted to select a host in an efficient manner, it could simply auction the right to hold the event to the highest bidder.⁹⁰ Instead, the IOC uses a host selection process where IOC members vote to select a host of the Olympic Games based on a variety of possible criteria that are not necessarily related to the city being the 'most capable' of hosting the Games, as discussed in Chapter Four. Naturally, the

⁸⁷ Miller (n 7) 204–05.

⁸⁸ See, e.g., Charles Banks-Altekruse, 'Give the Olympics a Home' *New York Times* (New York, 1 March 2010) A27; JoAnne D. Spotts, 'Global Politics and the Olympic Games: Separating the Two Oldest Games in History' (1994) 13 *Dickinson Journal of International Law* 103; Frederic C. Rich, 'The Legal Regime for a Permanent Olympic Site' (1982) 15 *New York University Journal of International Law and Politics* 1.

⁸⁹ However, this ideal was imperfect, as colonial teams were often excluded or marginalised, as were the working class, and women. Roche (n 20) 72–73.

⁹⁰ Mark F. Stewart and C.L. Wu, 'The Right to Host the Olympic Games Should be Auctioned to the Highest Bidder' (1997) 16 *Economic Papers: A Journal of Applied Economics and Policy* 40. See also Heather Mitchell and Mark Fergusson Stewart, 'What Should You Pay to Host a Party? An Economic Analysis of Hosting Sports Mega-Events' (2015) 47 *Applied Economics* 1550, 1560.

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selection of some of these hosts will entail a risk that the worst outcomes of the Games will occur.

The presumption of information asymmetry is challenged by an examination of the Olympic Games as a principal-agent exercise. While the IOC cannot know precisely every detail about the activities of its agents, the IOC does have information in a broad sense. The IOC should be aware of the general situation regarding human, social, and other rights in a host country. Such an exercise was completed in Chapter Four of this thesis, and there is no reason the IOC cannot do the same. Additionally, the Games are often under intense scrutiny by the media, human rights NGOs, Olympic Games ‘watchdog’ groups, amongst others. Many of these groups have been cited throughout this thesis to provide factual support. Perfect information symmetry is not to be expected of the IOC, and in some cases, information asymmetry may lead the agents to engage in morally hazardous activities. Presuming that the IOC is aware of the implications of hosting the Games, the IOC should have a responsibility, discussed in Chapter Four, to ensure that its agents also comply with basic human rights standards, and avoid the worst outcomes of the Games. An unwillingness or inability to control the actions of its agents does not absolve the IOC of responsibility.

Adjusting incentives may be insufficient to induce long-term compliance. Incentives are a rationalist approach, appealing to the self-interest of an agent. As discussed in Chapter Two of this thesis, a problem with appealing to the self-interest of an actor (whether through coercion, or through the promise of rewards), is that these methods are often short-term solutions, and come with the risk of actor defection from the institution. As an alternative, agents need to internalise the required norms, through social construction. As agents interact with the principal, they may be persuaded or adopt the principal’s norms.⁹¹ How might this argument be applied to the Olympic Games? Consider the example of environmental sustainability. As the IOC began to emphasise the importance of environmental sustainability, Lillehammer provided a model of environmental sustainability for other cities to follow. In recent years, hosts have made

⁹¹ Jeffrey T. Checkel, ‘Why Comply? Social Learning and European Identity Change’ (2001) 55 *International Organization* 553, 557–64.

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increasingly elaborate promises as to environmental sustainability.⁹² Of course, some hosts do not live up to those promises, but this may arguably be an issue of poor governance, lack of capacity, or other external factors rather than a fundamental disagreement with the norm.⁹³ As such, once the IOC internalises and communicates the norm that the worst outcomes of the Games are to be avoided, then its agents should do so as well.

4.2. Explanations of OCOG/Host City Actions

Information asymmetry does not provide much explanatory power for why the NOC/OCOG/Host City allow the worst outcomes of the Olympic Games to occur. What other explanations might be applicable, then? I will examine three: lack of a mandate, misaligned incentives, and incompetence.

First, it is possible that the agents have stood by while the worst outcomes of the Olympic Games have occurred because of a lack of a mandate by the IOC. Until 2014, the Olympic Games did not address human or social rights broadly, aside from environmental sustainability. Thus, avoidance of negative outcomes was more likely to come from pressure from local citizens or from other countries, as opposed to from the principal, the IOC. In areas where local pressure is ineffectual, namely countries with poor levels of accountability, the outcomes of the Olympic Games appear to have been worse than in other countries, shown in Chapter Four. The recent development of a more robust mandate may signal to the agents that they must take sustainability in a broad sense more seriously, and work harder to avoid the worst outcomes of the Games.

Second, these outcomes may be explained by the more traditional principal-agent argument of misaligned incentives. In order to discuss possible incentives that may be misaligned, it is helpful to recall the identities of both principal and its agents. On the one hand, the IOC is an international NGO, which has been around for over 120 years, and manages multiple Olympic Games at once. It has built itself into an organisation that espouses universal values, as discussed in Chapter Four, and bases its legitimacy in part on adherence to those values. On the other hand, the OCOG is a locally-focused organisation

⁹² Pentifallo and VanWynsberghe (n 70) 439.

⁹³ Martin Müller, '(Im-)Mobile Policies: Why Sustainability Went Wrong in the 2014 Olympics in Sochi' (2014)

21 *European Urban and Regional Studies* (2014 Sochi Olympics Virtual Issue) 1, 11–12.

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with a life of eight-to-ten years. It focuses on delivering a single Olympic Games. The OCOG wraps up most of its work the day after the Olympic Games (with a smaller organisation in place for the Paralympic Games), and is completely dissolved as a legal entity not long afterwards. The presidents of the OCOGs are often promoted to high-ranking executive positions in other sporting organisations not long afterwards. Thus, it can be said that the purpose of the OCOG is to deliver the Games, by hook or by crook. The Host City has a slightly longer-term focus, but is also perhaps more concerned with having a successful Games, leaving any negative legacies to future mayors, taxpayers, etc. The NOC is connected with the IOC, but has similar short-term incentives re delivery of the Olympic Games. Thus the short-term nature of the OCOG, and the short-term focus of the Host City and NOC contrast with the long-term interests of the IOC. The IOC is incentivised to have an Olympic Games with a strong long-term legacy, while the incentives of its agents are more closely aligned to short-term success. When negative legacies do occur, it is often the IOC that is tarred with the brush for years, if not decades. For instance, the debt (and thirty years repayment thereof) from the 1976 Montréal Games remains a symbol of the cost of hosting the Games four decades later, while the Montréal OCOG long ago ceased to exist.

Third, the agents may simply lack the competence to put on the Olympic Games. In examining the Sochi and Rio de Janeiro Olympic Games, researchers found that the hosts had made promises regarding environmental sustainability based on the standard set by prior editions of the Games. These promises were made because they were seen as likely to appeal to the IOC, and thus win the right to host the Games. Given the high-stakes and one-off nature of most Olympic bids, it was seen as best to mimic host cities, which were also successful bids. As such, Rio's "Blue Games for a Blue Planet" made promises based on what the IOC demanded and what prior Games promised, rather than what they could deliver.⁹⁴ Situations such as this can lead to promises being made without due consideration for the capacity of the local authorities to carry out the programme, which seems to have happened in Sochi.⁹⁵ This situation is exacerbated by the bids for the Games being prepared, in large part, by consultants, rather than locals, which undercuts a key

⁹⁴ Pentifallo and VanWynsberghe (n 70).

⁹⁵ Müller (n 93).

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reason for delegation in the first place—to take advantage of local expertise. The IOC has encouraged cities to not use consultants for the 2022 Games,⁹⁶ and is working to monitor lobbyists/consultants going forward.⁹⁷

4.3. Addressing Incentive Incompatibility

The central goal of principal-agent approaches is to improve incentives for agents to work in the interests of the principal. Certainly, given the above analysis, the OCOG and Host City appear to lack appropriate incentives to protect human rights. The ultimate goal of the IOC is to celebrate the Olympic Games. As such, when a conflict between organising the Olympic Games on time, and other issues conflict, then celebration of the Olympic Games will generally triumph. As such, the primary consequence that the IOC formally communicates to the agents, removal of the Games, is not credible. Might there be potential incentives or consequences for the OCOG and Host City to improve human rights? To consider possible alternative, the interests of the agent should be taken into account. This section will examine potential consequences that the IOC can impose upon hosts.

It is likely that a significant interest of the agents is to benefit economically. In many cases, that is a stated reason for bidding to host the Games in the first place.⁹⁸ Therefore, perhaps a financial incentive could be a possible incentive. Currently, the OCOG receives money from the IOC. To assist preparations for Games, the IOC provided \$414 million to VANOC (about 23% of VANOC's operating budget of \$1.77 billion),⁹⁹ and provided \$713 million to LOCOG (about 20% of LOCOG's operating budget of \$3.62 billion).¹⁰⁰ The 2022 Host City Contract provides for a payment of approximately US\$880

⁹⁶ Robert Livingstone, 'Top Olympic Bids Stories of 2014: #7 – IOC Reforms Mandate Bid Consultants Registry' (*Gamesbids*, 30 December 2014) <<http://gamesbids.com/eng/robs-bidblog/top-olympic-bid-stories-of-2014-7-ioc-reforms-mandate-bid-consultants-registry/>> accessed 04 June 2015.

⁹⁷ Agenda 2020 (n 18) 20.

⁹⁸ See, *supra* Chapter Four, Part 3.3.

⁹⁹ For IOC contribution, see, International Olympic Committee, 'Olympic Marketing Fact File: 2014 Edition' (2013) 7. For VANOC budget, see Ernst & Young, 'Consolidated Financial Statements: Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games' (2014) 4, available at <<https://cdnolympic.files.wordpress.com/2014/07/vanoc-financial-statements.pdf>>. The figures in Canadian dollars are \$485 million and \$1.895 billion, and are calculated using a conversion rate of \$CDN = 0.9335 \$US in place on 27 June 2014.

¹⁰⁰ For IOC contribution, see, International Olympic Committee, 'Olympic Marketing Fact File: 2014 Edition' (2013) 7. For LOCOG budget, see London Organising Committee of the Olympic Games and Paralympic Games

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million from the IOC to the OCOG.¹⁰¹ These funds, going by the wording of the 2022 Host City Contract, are “in consideration of the City, the NOC and the OCOG fully performing and complying with all of their obligations under this Contract...”.¹⁰² One possibility, then, would be to make the funding truly conditional. For instance, the World Bank and the IMF impose conditionality as part of their lending practices.¹⁰³ However, the same problem exists as with the removal of the right to host the Games. Would the IOC really withhold hundreds of millions of dollars from the organisers for the worst outcomes of the Games? Additionally, would the funds withheld be enough to overcome the incentive for the organisers to disregard human rights?

A second potential incentive, remaining with the theme of financial interest, could be a requirement that the Host City/OCOG/NOC post a bond. Mentioned in Chapter Four, following the 2012 Sochi Games, the IOC persuaded the organisers to pay \$8.3 million to workers who did not receive wages from their employers. However, this fund was created on the eve of the Games, after most of the construction was completed. If the workers who did not get paid were already on to a new project, or were already deported back to their home country, it is unlikely that the workers would have been able to access this fund. But, requiring a host to provide a bond in the first instance, to cover any possible claims of worker non-payment, or environmental damage, and so forth, may incentivise the OCOG and Host City to be more careful and vigilant to avoid the ‘worst outcomes’ of the Games.

A third possible incentive takes its cue from boycotts. The host city often hope to hold future sporting events after hosting an Olympic Games, becoming an essential part of the global sporting event circuit. As such, the IOC could make hosting future events conditional on avoiding the worst outcomes of the Games. However, the IFs and professional leagues that that govern sport would need to support this plan, as the IOC does not hold the right to the various other sporting events. In essence, this creates another

Limited, ‘London 2012 Report and Accounts: 6 Month Period Ended 31/3/2013’ (2013) 6, available at <http://www.olympic.org/Documents/Games_London_2012/London_Reports/LOCOG_FINAL_ANNUAL_REPORT_Mar2013.PDF>. The LOGOC budget figure in GBP is £2.38 billion, and is converted to \$US based on a conversion rate of GBP = 1.5195 \$US in place on 31 March 2013.

¹⁰¹ Host City Contract (n 15) Art. 14.a.1.

¹⁰² *ibid.*

¹⁰³ The World Bank, ‘Conditionality in Development Policy Lending’ (2007); International Monetary Fund, ‘Guidelines on Conditionality’ (2002).

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principal-agency problem. The IFs and leagues have their own interests regarding the hosting of sporting events, and their own opinion in regards to avoiding the worst outcomes of the Games. It is unlikely that the IOC would threaten an IF with a loss of funding based on hosting an event in a country that has played host to some of the worst outcomes of the Games, and may not be able to convince them to go along with the plan.

However, as stated in Chapter One, ‘consequences’ can be both negative, and positive. The IOC may be able to reward cities that successfully avoid or mitigate the worst outcomes of the Games. Perhaps the city could receive preferential treatment in future bids to host other sporting events. Or, perhaps some ‘seal of approval’ could be awarded by the IOC or an outside organisation, enhancing the brand of the city as one that engages in sustainable development. Positive consequences may require more creativity on the part of the parties, but is certainly achievable.

5. Conclusion: A Mandate to Avoid the ‘Worst Outcomes’ of the Games

Chapter Three of this thesis revealed that the Olympic Games presents a ‘problem of many hands’. Multiple actors are involved in organising the Games, creating a situation where establishing accountability is difficult. This chapter has attempted to unravel the problem of many hands to some degree, through the use of a principal-agent approach. The principal-agent approach is a simplified way of examining the organisation of the Olympic Games. Aside from the IOC, and the NOC/OCOG/host city triumvirate, other actors such as contractors and sub-contractors, labour unions, civil society organisations, and the like, are involved in organising the Games. Yet, a simplified model allowed for an examination of a few aspects of the organisation of the Olympic Games: the mandate, monitoring, and consequences for those involved.

In recent years, the IOC has made significant strides to make the mandate of those who are organising the Olympic Games more robust. The most recent example is through the Agenda 2020 reforms, which added labour standards, and other social issues as considerations for the agents who organise the Games. Although these standards can be improved upon, they are the beginning of a developing norm around avoiding the worst outcomes of the Olympic Games.

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However, unless and until the agents who organise the Games internalise those same norms, incentives are likely to be required to ensure that they comply with the mandates set out by the IOC. Once the organisers receive the right to host the Olympic Games, the IOC loses much of its leverage.¹⁰⁴ The only consequences that the IOC can apparently provide are public shaming, and the threat of the removal of the Games. Unfortunately, the latter is not credible, and the former may not mean very much to a recalcitrant organising committee.

A question lurking in the background of this discussion is: might it be the case that the IOC does not want to exert such control over its agents? Principal-agent theory presumes that the principal is seeking to have the agent carry out the task to the principal's specifications. But the principal may decide that the costs of doing so may be too high. This situation is not problematic when only the principal is affected, but is problematic when third parties suffer harm as a result of the principal's inaction. The IOC's priority is to celebrate the Games, and may view addressing other issues as costs to be avoided or minimized. Ensuring that the worst outcomes of the Games do not come to pass requires significant coordination on the part of the IOC to set out a mandate, monitor, and then impose consequences upon its agents. What if the IOC simply decides that its efforts are better spent on ensuring that preparations are simply done, regardless of the cost, and decides not to hold its agents to account? The accountability of the IOC itself is examined in the next chapter.

¹⁰⁴ Michael Payne, *Olympic Turnaround: How the Olympic Games Stepped Back from the Brink of Extinction to Become the World's Best Known Brand* (Praeger 2006) 154.

Chapter Seven

Learning from the World Bank: Towards an Accountability Forum for the Olympic Games

1. Introduction

Chapter Six used a principal-agent approach to examine the IOC's regulation of the actors that put on the Olympic Games: the NOC, the OCOG, and the Host City. The chapter revealed that the IOC is making progress in regards to holding its agents to account for the worst outcomes of the Olympic Games, and that Agenda 2020 looks to strengthen this accountability. Yet, there are shortcomings—such as weak consequences for the agents.

Principal-agent approaches tend to focus on the morally hazardous activities of the agent, and on methods with which the principal can incentivise the agent to perform the delegated task. Keeping with the concept of the principal-agent approach, this chapter examines the role of the principal—the IOC. As discussed in Chapter Six, although the IOC is progressively strengthening the mandate of the agents, it is possible that the IOC may be unwilling or unable to take the necessary steps to hold the agents to account. This lack of action may be in the IOC's self-interest, given the costs of monitoring and sanctioning agents. However, it is not in the public interest. This chapter then asks the question: who watches the watchman? When the IOC does not regulate its agents, how can it be held to account?

Chapters One and Three observed that the IOC is largely unaccountable to other actors. This chapter will examine existing accountability forums within the Olympic Movement, namely the CAS and the IOC Ethics Commission, to examine how they might be involved in improving accountability for the conduct of the Olympic Games. Yet, the IOC, and the broader Olympic Movement, are often accused of being too insular, a problem also discussed in Chapters Two and Three. For that reason, this chapter will turn its gaze away from the world of sport to examine other practices. The World Bank, and its

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Inspection Panel, is probably the most-discussed institution in regards to accountability in global administrative law. This chapter will examine how the World Bank addressed its accountability concerns in the 1980s and 1990s. To guide the research, three research questions are posed. First, how did the World Bank address concerns over its accountability? Second, how is the World Bank similar or different to the IOC? Third, what lessons from the World Bank's experience might be applicable to the IOC moving forward?

This chapter will proceed over four further parts. Part Two will outline the comparative legal approach used, and grapple with some of the criticisms of the approach. It will also discuss the similarities between the Olympic Games and World Bank projects to set the groundwork for the comparison. Part Three will carry out the comparative analysis of the accountability forums within the Olympic Movement, and those within the World Bank. Attention will also be paid to the history of the World Bank that led to the creation of the World Bank Inspection Panel ('WBIP'). Part Four will examine how an inspection panel, similar to the WBIP, might work within the Olympic Movement, and what considerations would have to be taken into account. Part Five will conclude.

2. A Comparative Analysis of the IOC and the World Bank

2.1. A Functionalist Comparative Law Approach

'Comparative law' is an umbrella term for a basic concept—comparing two or more legal institutions—that uses a variety of particular approaches. I will use a standard comparative law approach: the functionalist approach. This approach compares institutions that fulfil an equivalent function, and/or relate to a similar problem.¹ The functions of the IOC and the World Bank, discussed below, are different. However, the problem that they are coping with is the same—namely the accountability of principal organisations for problems created by their agents that lead to harmful outcomes, such as violations of human rights, environmental unsustainability, and poor economic legacies. These problems have also

¹ A. Esin Örücü, 'Methodology of Comparative Law' in Jan M. Smits (ed), *Elgar Encyclopedia of Comparative Law* (2nd edn, Edward Elgar 2012) 564; Julie de Coninck, 'The Functional Method of Comparative Law: *Quo Vadis?*' (2010) 74 *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht* 318, 324; Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, OUP 1998) 34–35.

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occurred in a situation where no effective external accountability mechanism exists (e.g., domestic or international courts). The actual steps the method will use are outlined in Part Three.

Using a functionalist approach brings its share of critiques. The three main critiques often associated with this approach are: cultural bias, hegemony, and an agenda of ‘sameness’.² First, critics assert that a functionalist approach comes with a variety of cultural biases, namely that a ‘Western’ viewpoint is superior to others. However, a comparative law approach is not about normatively evaluating particular legal cultures or viewpoints.³ Instead, it is about examining how different institutions approach the same problem. Applied correctly, learning goes both ways. A second critique raises concerns that a functionalist approach carries out an agenda of imposing a particular system upon an ‘other’.⁴ A comparative approach is taken to examine potential lessons and means by which to improve the legal infrastructure. In a modern, globalized society, interactions between legal systems will occur, regardless. It is naïve to believe that a system will never change, as social constructivism posits that institutions change interests and identities through interactions with others. So, while comparativists should take care not to impose wholesale change without regard for the identities and interests of an actor, promoting stasis defeats the purpose of comparison. This leads to the third critique, that comparative law may foster an agenda of ‘sameness’,⁵ where an ‘optimal’ solution is considered that ignores all the small details that lead to institutions implementing solutions in different ways. In countering this critique, I acknowledge that the institutions that I am comparing are indeed different in terms of mandate, culture, practices, identity, and so forth. Simply because a solution works well for one particular actor, does not mean it will be similarly effective for another.

A final potential critique of this comparative analysis involving the IOC and the broader Olympic Movement is that they are somehow *sui generis* international institutions. This argument would rely on the discussion in Chapter Three, revealing the IOC as

² Anne Peters and Heiner Schwenke, ‘Comparative Law Beyond Post-Modernism’ (2000) 49 *The International and Comparative Law Quarterly* 800.

³ *ibid* 820.

⁴ *ibid* 822–23.

⁵ *ibid* 827.

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essentially a transnational autonomous legal order.⁶ Given the unique properties of sport, then, a comparison of the IOC to another international actor would appear to be inapt. However, as discussed in Chapters One and Three, despite some of the unique features of the Olympic Movement, it is a global governance institution. As such, keeping in mind the particular differences that may arise, a comparison of members of the Olympic Movement with other global governance institutions is reasonable.

2.2. The IOC and the World Bank: Functionally Comparable?

When conducting a comparative analysis, perhaps the most interesting question is: which institutions are being compared? As revealed in the introduction to this chapter, I will compare the IOC to the World Bank. The IOC, as the head of the Olympic Movement, and the rights-holder to the Olympic Games, is the focus of this thesis. The World Bank has been selected as a comparator for three reasons: the similarity between the outcomes of World Bank projects and the Olympic Games, the problem with these outcomes that both institutions are attempting to solve, and the World Bank's status as a global governance actor.

First, despite the different missions of the IOC and the World Bank, the outcomes of the actions of these organisations are similar. The mission of the IOC is “to promote Olympism throughout the world and to lead the Olympic Movement.”⁷ Olympism is a social movement defined as “a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles.”⁸ The World Bank's mission is to assist development of states “by facilitating the investment of capital for productive purposes.”⁹ More recently, the World Bank has redefined its mission to ending extreme poverty and promoting income growth amongst the poorest 40% of every state.¹⁰ Despite the differences in the intent of the organisations, the impact of their flagship projects is similar. The IOC's flagship project is the Olympic Games, while the World Bank engages in many activities, perhaps the best-known being

⁶ Ken Foster, ‘Is There a Global Sports Law?’ (2003) 2 Entertainment Law 1, 2.

⁷ International Olympic Committee, Olympic Charter (2014) Rule 2 (Olympic Charter).

⁸ *ibid* Fundamental Principles of Olympism.

⁹ IBRD Articles of Agreement (as amended effective Feb. 16, 1989), Article I.

¹⁰ World Bank, ‘What We Do’ <<http://www.worldbank.org/en/about/what-we-do>> accessed 13 September 2014.

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the provision of loans and grants to emerging market economies to support infrastructure projects, known as “investment project financing”.¹¹ While the IOC and World Bank engage in many other actions, I am focusing on their flagship projects because this research is focused on the conduct of the Olympic Games, and focusing on a similar project under the auspices of the World Bank narrows the scope of comparison.

These projects are similar in that countries seek to work with the international actors on these projects to improve their socio-economic situation, at least in part. Certainly, this is an intent of World Bank infrastructure projects. As addressed in Chapter Four, a motive of economic development is also connected to the Olympic Games. For instance, the Games often lead to massive infrastructure improvements as to roads, mass transportation, airports, hotels, housing (i.e., the Athletes’ Village), telecommunications upgrades, electrical power, and city beautification. A difference, however, is the populations affected. The Olympic Games are generally held in urban environments (or alpine resorts for the Winter Olympic), while World Bank projects may be urban in nature, or may affect rural populations, such as farmers, animal herders, remotely-located indigenous populations, and so forth. This difference does not undermine the comparison for this research, but should be kept in mind.

A second key functional similarity between the IOC and the World Bank is that these two actors are attempting to address the same problem: a lack of institutional accountability for the worst outcomes of their projects, which are carried out by other actors. Chapter Four outlined the worst outcomes of the Olympic Games, which involve violations of labour and housing rights, cause environmental damage, and leave socio-economic legacies that may not live up to what was promised by those in charge, but may also be damaging to the community. Problems with the transparency of and public participation in the Olympic Games projects were addressed in Chapter Five. Similarly, World Bank projects came under heavy criticism in the 1980s for similar reasons, detailed in Part 3.2.2. Harms investigated by the WBIP in recent years include displacement of

¹¹ World Bank, ‘The World Bank Operations Manual: Operational Policies’ (2015) OP10.00, para 1 (World Bank Operations Manual).

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persons, negative impacts on indigenous peoples, environmental harm, and poor decisions resulting from a lack of transparency and public participation.¹²

Yet, these projects are not directly carried out by the IOC or the World Bank. Chapter Six discussed the various agents that the IOC uses to orchestrate the Olympic Games, and Part Four of that chapter discussed the significant amount of funding that the IOC provides the OCOGs. Similar to the Olympic Games, World Bank-funded projects are not carried out by the Bank itself. Instead, the Bank provides funding, and in many cases is one of several funders. In Fiscal Year 2013, the World Bank lent US\$31.5 billion.¹³ As a condition of financing, the Bank imposes various requirements upon the recipients, which will be discussed below. Therefore, the Bank is in a principal-agent relationship similar to the IOC with its agents. There are also significant differences. First, the World Bank is responsible to states, as discussed below. Thus, the World Bank is itself an agent of states.¹⁴ Second, the states that receiving funding from the World Bank may have votes on the World Bank, influencing general Bank policy. As such, the principal-agent relationship is more convoluted than that between the IOC and the NOC/OCOG/Host City. Regardless, both organisations have a significant ‘power of the purse’.

Third, both the IOC and World Bank can be conceptualised as global governance and global administrative actors. The IOC is the global administrative body that regulates sport. The World Bank engages in global governance and global administrative law practices through setting standards for ‘good governance’ as a condition of receiving the Bank’s financial assistance.¹⁵ The World Bank has received a great deal of attention from GAL scholars, as well as legal scholars interested in accountability generally, who focus

¹² World Bank, *Accountability at the World Bank: The Inspection Panel at 15 Years* (The International Bank for Reconstruction and Development/The World Bank 2009) 30 (The WBIP at 15 Years); Dana L. Clark, ‘The World Bank and Human Rights: The Need for Greater Accountability’ (2002) 15 *Harvard Human Rights Journal* 205, 211–16 (detailing involuntary resettlement due to World Bank projects).

¹³ The World Bank, Annual Report 2013, 6
<https://openknowledge.worldbank.org/bitstream/handle/10986/16091/9780821399378.pdf?sequence=1> accessed 15 September 2014.

¹⁴ Daniel L. Nielson and Michael J. Tierney, ‘Delegation to International Organizations: Agency Theory and World Bank Environmental Reform’ (2003) 57 *International Organization* 241, 245.

¹⁵ See Benedict Kingsbury, Nico Krisch and Richard B. Stewart, ‘The Emergence of Global Administrative Law’ (2005) 68 *Law and Contemporary Problems* 15, 21.

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their analysis on the WBIP, discussed in more detail below.¹⁶ Given the focus on the World Bank's efforts to improve its accountability, the World Bank makes a good comparator for other global governance/GAL actors, including the IOC.

3. Comparing the IOC and the World Bank in Terms of Accountability

To carry out the functional comparative law analysis, I will use a four-step approach: (1) conceptualization of the problem; (2) description of the institutions to be compared; (3) examining the similarities/differences between the institutions; and (4) explaining the variability between the institutions.¹⁷

3.1. Conceptualizing the Problem

At the first stage of analysis, what is being compared should be considered at an abstract level. In this case, the IOC and World Bank are both global governance organisations. As established in Chapter Three, the IOC is an NGO, and part of the broader Olympic Movement. However, the World Bank is an IO, with member states. Although both actors are complex actors, as described below, I will generally treat them as unitary actors. In addition, for the ease of analysis, I will focus on the formal accountability forums used to hold the IOC and World Bank accountable. Given that the problem is one of accountability, a focus on formal accountability will narrow the scope of analysis to a manageable degree.

3.2. Describing the Accountability Forums of IOC and the World Bank

In describing the accountability forums of the IOC and the World Bank, I will also describe the overall functions of the IOC and the World Bank, to provide context for further analysis. The discussion of the IOC has been carried out in-depth in Chapter Three, so the

¹⁶ See, e.g., Sanae Fujita, *The World Bank, Asian Development Bank and Human Rights* (Edward Elgar 2013); Eisuke Suzuki and Suresh Nanwani, 'Responsibility of International Organizations: the Accountability Mechanisms of Multilateral Development Banks' (2005–2006) 27 *Michigan Journal of International Law* 177; David Bradlow and Andria Naudé-Fourie, 'Independent Accountability Mechanisms at International and Regional Development Banks' in David Held and Thomas Hale (eds), *Handbook of Transnational Governance: Institutions and Innovations* (Polity Press 2011); Dana L. Clark (n 12) 217–20.

¹⁷ Örücü (n 1) 568–70. This approach also includes a step on 'theory-building', but I will do that in the Conclusion to this work more generally.

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focus in this chapter is more on the mechanisms that hold the IOC accountable: the CAS, and the IOC Ethics Commission.¹⁸ The World Bank will be discussed in more depth to provide the needed context, as will its accountability forum, the WBIP.

3.2.1. Accountability Forums and the IOC: the CAS and the IOC Ethics Commission

The CAS is not a court of general jurisdiction, but an arbitral body. As such, disputes are submitted to CAS by agreement between the parties, which is accomplished via contract, or through the general statutes of the relevant actors, such as the IOC or an IF.¹⁹ The CAS has two divisions: (1) the ordinary arbitration division, which hears cases of first instance; and (2) the appellate division, which hears appeals from decisions already made by sporting bodies (e.g., by disciplinary bodies within an IF).²⁰ *Ad-hoc* CAS panels are established for other major sporting events such as the Olympic Games, the FIFA World Cup, or the Commonwealth Games to adjudicate matters such as anti-doping procedures and athlete eligibility questions. The CAS is located in Lausanne, and has satellite locations in Sydney and New York City. In 2012, several ‘alternative hearing centres’ were established in Shanghai, Abu Dubai, Kuala Lumpur, and Cairo. In terms of caseload, in 2012 the CAS saw 374 requests for arbitration, with 62 at the ordinary division, 301 at the appellate division, and 11 for the *ad-hoc* panels.²¹ About 75% of these cases resulted in an award from the CAS, with the rest being withdrawn or terminated by CAS through proceedings other than issuing an award.

Can the CAS hold the IOC accountable for the worst outcomes of the Olympic Games? Disputes between the IOC and the NOC/OCOG/Host City are to be submitted to the CAS, as per the Host City Contract.²² Yet, it would be against the self-interest of the IOC’s agents to take the IOC to arbitration on the grounds of insufficiently holding the agents to account for fulfilling their mandate under the Host City Contract. To date, to the best of the author’s knowledge, the CAS has not granted an award in regards to any cases

¹⁸ Although the World Anti-Doping Agency was mentioned as a ‘regulator’ of the Olympic Movement in Chapter Three, its mandate is solely anti-doping, and will not be discussed here.

¹⁹ CAS Statutes R27.

²⁰ *ibid* S20.

²¹ Court of Arbitration for Sport, ‘Statistics’ (*TAS-CAS.org*) <http://www.tas-cas.org/fileadmin/user_upload/CAS_Statistics_2013.pdf> accessed 05 June 2015.

²² International Olympic Committee, Draft Host City Contract: Olympic Winter Games in 2022 (2014) art. 87.

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that involve the IOC and one of its agents in regards to the Olympic Games.²³ Even if a case was brought to the CAS, the arbitration panel could declare itself incompetent to hear a dispute over the worst outcomes of the Olympic Games that might violate the terms of the Host City Contract.²⁴

As it stands, the CAS cannot serve as a mechanism for IOC accountability for those who are impacted by the Olympic Games as individuals, NGOs, etc., are not in a contractual relationship with the IOC that would trigger CAS jurisdiction. However, after Agenda 2020, the IOC is planning to allow other parties to sign the Host City Contract “in line with the local context.”²⁵ It remains to be seen what parties and what context are applicable. Might aboriginal groups be able to sign the Host City Contract if a city such as Vancouver hosted the Olympic Games again in the future? Could a city with a strong local neighbourhood group sign-on to the Host City Contract? If so, that could serve as a means for affected persons or groups to bring the IOC before the CAS in the future. However, it seems unlikely that groups that may oppose the Games, or be seen as ‘troublemakers’ would be invited to sign onto the Host City Contract.

The other actor that may hold the IOC accountable for the Olympic Games could be the IOC’s Ethics Commission. The mandate of the Ethics Commission is threefold: to define the ethical principles for the IOC through a Code of Ethics, to investigate complaints that IOC Members have violated these ethical principles, and to propose sanctions for ethical violations to the IOC Executive Board.²⁶ The Ethics Commission was created under pressure from the US media and sponsors following the Salt Lake City scandal.²⁷ The Ethics Commission has nine members, with a maximum of four who are IOC Members, with the rest from outside of the IOC. The Commission members were designated by the IOC President and confirmed by the IOC Executive Board, and the Chair appointed by the

²³ It is possible that cases have taken place, since arbitral awards under the ordinary procedures are confidential, unless agreed to by the parties, or unless the CAS decides otherwise. CAS Statutes R43.

²⁴ CAS Statutes R39.

²⁵ International Olympic Committee, ‘Olympic Agenda 2020: Context and Background’ (2014) 4 (Agenda 2020).

²⁶ Olympic Charter (n7) Rule 22.

²⁷ Jean-Loup Chappelet and Brenda Kübler-Mabbott, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge 2008) 156.

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IOC President.²⁸ Following Agenda 2020, both groups are to be elected by the IOC Session in a secret ballot.²⁹ As of July 2015, the non-IOC members of the Commission a former International Court of Justice judge from Slovakia, the President of the French Court of Cassation, a Spanish diplomat, a former member of the Swiss Federal Council, and a former president of the Senegalese Supreme Court.³⁰

The Ethics Commission has dealt with cases involving the host city selection process.³¹ The host city selection process has its own ethics guidelines through the “Rules of Conduct”, which prohibit for instance, the giving of gifts to IOC members, or require IOC members to notify the IOC if they are visiting a city that is bidding to host the Games.³² The most notable case involving the host selection process is the expulsion of IOC member Ivan Slavkov. Slavkov was asked by undercover reporters from the BBC, posing as members of an English company, whether he could influence the voting for the 2012 Games, for which London was a Candidate City. At no point did Slavkov object to discussing a contractual arrangement whereby he would secure votes from IOC members he could influence (socially, or financially). In addition, Slavkov did not inform the Ethics Commission as soon as possible, which is the duty of IOC members when faced with concerns regarding corruption. The Ethics Commission found that Slavkov tarnished the reputation of the IOC, and failed in his duty as an IOC member in not informing the Commission as soon as possible. The Commission proposed expulsion, which was eventually carried out by the IOC.³³ The other known case investigated by the Ethics Commission involved the conduct of London and Paris during their bids to host the 2012 Olympic Games. However, this conduct was not serious. The case of London involved the offering of additional incentives, such as free air travel for athletes to the Games, after it

²⁸ International Olympic Committee, Ethics: Statutes of the IOC Ethics Commission (2013) A.2, A.3 (IOC Ethics Commission Statutes).

²⁹ Olympic Charter (n 7) Rule 22; Agenda 2020 (n 25) 17.

³⁰ The members are, respectively, Thomas Buerghenthal, Guy Canivet, José Louis Dicenta Ballester, Samuel Schmid, and Youssoupha Ndiaye. International Olympic Committee, Ethics Commission: Composition <<http://www.olympic.org/ethics-commission?tab=composition>> accessed 6 July 2015.

³¹ See Chappelet and Kübler-Mabbott (n 27) 162–63.

³² International Olympic Committee, 2022 Candidature Acceptance Procedure: XXIV Olympic Winter Games (2013) 29–34.

³³ IOC Ethics Commission, Decision No D/5/04.

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had submitted its bid.³⁴ Paris and London also came under scrutiny for being critical of each other's bids, which is prohibited conduct.³⁵ Otherwise, no serious misconduct regarding the activities of bid cities has been examined by the IOC Ethics Commission.³⁶

The Ethics Commission is limited by its jurisdiction. The Commission addresses concerns over individual IOC members, and requires that complaints are brought by IOC members. As such, individuals and civil society groups do not have access to the Ethics Commission. Additionally, individual IOC members are unlikely to be targeted for complaints for the worst outcomes of the Games, as they are not active participants in the worst outcomes of the Olympic Games. Although some IOC members serve on the OCOG, it is unlikely that the Ethics Commission would consider this to be a matter under their jurisdiction. It is also unlikely that an individual member of say, the Coordination Commission responsible for overseeing the OCOG would be in any ethical breach for failing to bring an OCOG into line, given the Commission's limited mandate. Although the IOC has recommended that the Commission review its Code of Ethics and Rules of Procedure to align with the goals of increased transparency, good governance, and accountability,³⁷ it seems unlikely that this recommendation will lead the Ethics Commission to expand its jurisdiction to cover the duties of an IOC member *qua* OCOG member.

Concerns have also been raised about the independence of the CAS and Ethics Commission from the IOC itself, discussed in Chapter Three. While the problems raised in the *Pechstein* case have largely been addressed through changes to the appointment of arbitrators, the larger concern of the control of sporting organisations over the CAS remains. The Ethics Commission has faced questions as to its independence. Until 2014, the Commission was appointed by and reported to the IOC Executive Board. The same

³⁴ See 'London Escapes IOC Action' *The Guardian* (London, 28 April 2005)

<<http://www.theguardian.com/sport/2005/apr/28/Olympics2012.politics>> accessed 8 July 2015. This

³⁵ See Paul Kelso, 'Olympic Watchdog Keeps Close Eye on Paris and London' *The Guardian* (London, 10 March 2005) <<http://www.theguardian.com/sport/2005/mar/10/Olympics2012.politics>> accessed 8 July 2015.

³⁶ See Robert Livingstone, 'IOC Rule Enforcement for 2024 Olympic Bids Mimics Sport' (*Gamesbids*, 24 April 2015) <<http://gamesbids.com/eng/summer-olympic-bids/2024-olympic-bid-news/ioc-rule-enforcement-for-2024-olympic-bids-mimics-sport/>> accessed 8 July 2015.

³⁷ Agenda 2020 (n25) 90.

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Board approves its annual budget,³⁸ and approves updates to the Code of Ethics.³⁹ Agenda 2020 remedies some of this, as the Ethics Commission is now selected by the IOC Session.⁴⁰ Yet, given that IOC members staff the Commission that is tasked with keeping an eye on IOC members, this situation has the appearance of foxes guarding the henhouse. Chappelet and Kübler-Mabbott have also raised concerns over the appearance of the Commission as independent as its office are within the premises of the IOC, and its website is nested within the broader IOC website.⁴¹

As they are constituted now, the current regulatory bodies within the IOC are incapable to hold the IOC accountable for the worst outcomes of the Olympic Games. Their particular shortcomings involve: (1) lack of jurisdiction/access by those outside of the Olympic Movement, (2) concerns over expertise of the arbitrators, and (3) independence. Perhaps the most significant hurdle to the CAS to cross is the issue of jurisdiction. Given the Agenda 2020 reforms to the Host City Contract that may allow for additional signatories, perhaps this could open up the jurisdiction of the CAS to a broader constituency. However, this is unlikely as allowing complaints about the conduct of the Olympic Games into what is largely an arbitral body for issues such as anti-doping cases, athlete eligibility rules, and the like, would be vastly expanding the scope of the CAS. The second concern, as to the expertise of the arbitrators, could be easily remedied by selecting arbitrators with the appropriate expertise. The third concern, the independence of the CAS, is something that the CAS, and the rest of the Olympic Movement, is continually working to improve.⁴²

3.2.2. The World Bank

Before discussing the most significant accountability forum of the World Bank, the WBIP, I will outline the structure of the Bank itself. The World Bank is actually an amalgam of two organisations: the International Bank for Reconstruction and Development ('IBRD') and the International Development Association ('IDA').⁴³ The IBRD was created as part of

³⁸ Chappelet and Kübler-Mabbott (n 27) 158.

³⁹ Olympic Charter (n 7) Bye-law to Rule 22, 2.

⁴⁰ Agenda 2020 (n 25) 88.

⁴¹ Chappelet and Kübler-Mabbott (n 27) 158.

⁴² *Infra* Chapter Three, Part 3.4.

⁴³ Other organisations are included in the broader 'World Bank Group', but are not discussed here. These other organisations are: the International Finance Corporation, which focuses on the private sector; the Multilateral

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the post-World War II international economic system, known as the ‘Bretton Woods’ system, and tasked to finance the reconstruction efforts of Europe. Eventually, the IBRD broadened its goals to include global economic development and poverty eradication. The IDA was established in 1960 to provide loans and grants to the poorest emerging market economies.

Unlike the IOC, the World Bank is an international organisation, established by international treaty and comprised of member states. Today, the World Bank has 188 member states, with only the Democratic People’s Republic of Korea and Cuba as significant states outside of the fold.⁴⁴ Unlike the United Nations, member states of the World Bank do not exercise their power on a one-state, one-vote basis. Instead, World Bank member power is determined by the number of shares the member state buys in the World Bank—i.e., the amount of money paid to fund the Bank’s activities. As of March 2015, the United States has a voting power of 16.28%, while Japan (7.54%), Germany (4.42%), the U.K. (3.96%) and France (3.96%) also have significant shares.⁴⁵ Due to its status as an IO, the World Bank possesses legal immunity in regards to its actions.⁴⁶

The senior decision-making body of the World Bank is the Board of Governors. One Governor is appointed by each member state, and is usually a finance minister, central bank governor, or similar.⁴⁷ The day-to-day authority resides in the twenty-five Executive Directors.⁴⁸ Of the Executive Directors, five are appointed from the states with the largest amount of Bank shares, and the remaining twenty are voted upon by the other member

Investment Guarantee Agency, which promotes foreign investment into emerging market economies; and, the International Centre for Settlement of Investment Disputes.

⁴⁴ The other states that are UN members, but not members of the World Bank, are the micro-states of Andorra, Liechtenstein, Monaco, and Nauru.

⁴⁵ World Bank Corporate Secretariat, ‘International Bank for Reconstruction and Development Subscriptions and Voting Power of Member Countries’ 20 May 2015, available at <<http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDCountryVotingTable.pdf>>.

⁴⁶ Convention on the Privileges and Immunities of the Specialized Agencies (adopted 21 November 1947, entered into force 02 December 1948) 33 UNTS 261.

⁴⁷ World Bank, ‘Boards of Governors’ (*The World Bank*)

<<http://www.worldbank.org/en/about/leadership/governors>> accessed 16 July 2015.

⁴⁸ IBRD Articles of Agreement, art. V, sec. 4(a). Between the IBRD Articles of Agreement, and 2010, the number of Executive directors increased from twelve to twenty-five. World Bank, ‘Board of Directors’ (*The World Bank*) <<http://www.worldbank.org/en/about/leadership/directors>> accessed 5 June 2015.

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states.⁴⁹ The president of the Bank is selected from the Executive Directors. Finally, the World Bank's activities are carried out by its management and staff.

The Bank engages in various poverty-reduction programmes, but is best known for investment-lending. The Bank provides loans and grants for investments by the state government in areas such as education, health, private sector development, and infrastructure. The Bank does not carry out the projects itself. Instead, the state applies to the Bank for the funds, and then carries out the project, alongside partners from the private sector as required.⁵⁰ In addition to funding, the Bank provides oversight of the project and technical assistance.⁵¹ This situation arguably creates a principal-agent relationship of sorts between the World Bank and the states to which it loans money. On the one hand, this is perhaps not a true principal-agent relationship, as the World Bank is not delegating authority to the state, certainly not in the manner the IOC delegates authority for carrying out the Olympic Games. However, the World Bank does play a significant role in funding the project, and placing requirements through its operational policies and procedures ('OP&Ps') which would then restrict the ways in which the state would otherwise carry out the project, in a manner similar to a principal-agent relationship.

3.2.3. The World Bank Inspection Panel

Throughout the 1980s and 1990s, the World Bank faced criticism for its lack of accountability regarding failed development projects that it funded. Many World Bank projects were labelled "development disasters",⁵² while an estimated 37.5% of projects were considered to be outright "failures".⁵³ The catalyst for the criticism to blossom into a crisis was the Sardar Sarovar Dam project on the Narmada River in India. The "submergence area" of the dam—the land that would be put underwater as a result of the dam—would have displaced over 100,000 people, many of whom had no formal title to the land.⁵⁴ Many other individuals were also affected for a variety of reasons, such as the

⁴⁹ IBRD Articles of Agreement, art. V, sec. 4(b).

⁵⁰ World Bank, 'Financing Instruments' <<http://www.worldbank.org/en/projects-operations/products-and-services#2>> accessed 17 July 2015.

⁵¹ *ibid.*

⁵² The WBIP at 15 Years (n 12) 3.

⁵³ Suzuki and Nanwani (n 16) 186.

⁵⁴ Bradford Morse and Thomas R. Berger, *Sardar Sarovar: Report of the Independent Review* (Resources Futures International 1992) 71 (Morse Report).

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140,000 farms that would have been negatively affected by the canal and irrigation to be put into place.⁵⁵ The worst outcomes of World Bank projects, which included displacement of persons and environmental harm, led to the creation of the ‘Morse Commission’ in 1991 to independently review the project.

The Morse Commission found that: “The Bank and India both failed to carry out adequate assessments of human impacts of the Sardar Sarovar Projects. Many of the difficulties that have beset implementation of the Projects have their origin in this failure.”⁵⁶ Additionally, the Commission found that a failure to consult those affected by the project compounded the problems. The World Bank simply failed to include its policies on resettlement and environmental protection into the loan agreements, and failed to require adherence to the policies that were included in the agreements.⁵⁷ These actions were linked to the “original sin” of failing to appraise the project and provide basic data. The report criticized the Bank for having a “culture of approval”, amongst other failings.⁵⁸ The Morse Commission’s report spurred the creation of a new institution to improve the accountability of the World Bank, the WBIP.

The WBIP was established in 1993, and began operations on 1 August 1994. The mandate of the WBIP is to “investigate whether the World Bank has complied with its own operational policies and procedures in the design, appraisal, and implementation of a project.”⁵⁹ The Panel is a fact-finding body, limited to investigating whether or not the World Bank has complied with its own OP&Ps. The OP&Ps include standards that are related to human rights, for example, Bank staff and borrowers are required to consult with and provide information to local communities, assess risks, avoid displacement of persons—or, in the case of displacement, assist displaced persons—respect the rights of indigenous persons, and conduct environmental impact assessments.⁶⁰ As such, the Panel

⁵⁵ Thomas R. Berger, ‘The World Bank’s Independent Review Panel of India’s Sardar Sarovar Project’ (1993) 9 *American University International Law Review* 33, 35, 42.

⁵⁶ Morse Report (n 54) 349.

⁵⁷ *ibid* 353.

⁵⁸ *ibid* 79.

⁵⁹ *The WBIP at 15 Years* (n 12) 16. *See also* World Bank, International Bank for Reconstruction and Development – International Development Association, Resolution No. IBRD 93-10, Resolution No. IDA 93-6, “The World Bank Inspection Panel”, art. 12 (WBIP Resolution).

⁶⁰ ‘World Bank Operations Manual’ (n 11) OP 4.01 and 4.02 (environmental assessments); OP 4.10 (indigenous persons); and OP4.12 (displacement); Clark (n 12) 205.

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has investigated claims involving displacement and resettlement, indigenous peoples, cultural property, the environment, and the harm caused by poor decisions that result from a lack of transparency and public participation.⁶¹ Based on a narrow reading of the Panel's mandate, it is precluded from investigating World Bank projects based on general human rights standards. However, in one particular investigation, the *Chad Petroleum* investigation, the Panel hinted that a human rights regime broadly underpins the Bank's work,⁶² and is viewed by some scholars as establishing a broader human rights basis for investigations.⁶³

The Panel itself is comprised of three members from different states. These members serve five-year terms, which are staggered to ensure continuity on the Panel.⁶⁴ The members are nominated by the President of the World Bank, and appointed by the World Bank's Executive Directors.⁶⁵ Panel Members cannot have worked for the Bank for two years prior to their appointment to the Panel, and cannot work for the Bank at all following their term.⁶⁶ An Executive Secretariat supports the Panel in its daily operations, and external consultants assist investigations.

When a complaint about a World Bank project is sent to the WBIP, a multi-step procedure is followed that are be grouped into four phases: (1) receipt of request; (2) eligibility and Panel recommendation; (3) investigation and Bank management recommendation; and (4) post-investigation activities.⁶⁷ The entire process, from the initial receipt of request to the initiation of post-investigation activities, takes about one year.⁶⁸ From its beginnings in 1994 to the end of 2014, the Panel received ninety-nine requests for inspection—roughly five per year on average.⁶⁹ The years 2013 and 2014 saw eight

⁶¹ *The WBIP at 15 Years* (n 12) 30.

⁶² World Bank Inspection Panel, 'Investigation Report: Chad-Cameroon Petroleum and Pipeline Project (Loan No. 4558-CD); Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD); and Management of the Petroleum Economy (Credit No. 3316-CD)' (2002) 60–63.

⁶³ Andria Naudé Fourie, 'The World Bank Inspection Panel's Normative Potential: A Critical Assessment, and a Restatement' (2012) LIX Netherlands International Law Review 199, 222–23.

⁶⁴ WBIP Resolution, art. 3.

⁶⁵ *ibid.*, art. 2.

⁶⁶ *ibid.* art. 5.

⁶⁷ World Bank Inspection Panel, 'The Inspection Panel at the World Bank: Operating Procedures' (April 2014) 8 (WBIP Operating Procedures).

⁶⁸ *ibid.* 21–22.

⁶⁹ The World Bank, Inspection Panel, 'All Cases' (*World Bank*)

<<http://ewebapps.worldbank.org/apps/ip/Pages/AllPanelCases.aspx>> accessed 05 June 2015.

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requests for inspection each. The number of World Bank projects approved in 2013 and 2014 were 222 and 286, respectively.⁷⁰ Thus, only a small percentage of projects generate requests for Panel inspection.

To set the WBIP procedure in motion, a written request must be made. The request must be submitted by two or more individuals (or their representative). A request may be submitted at almost any point in the project—from the time the project is under consideration by the World Bank management, to the point where the disbursement of financing is 95% complete. A request may be written in any language, and may be kept confidential by the Panel.⁷¹ The party making the request “must demonstrate that its rights or interests have been or are likely to be directly affected by an act or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank.”⁷² The request must contain the following:

- a) names and addresses of requesters;
- b) concise description of the project;
- c) description of harm or likelihood of harm;
- d) actions or omissions of the Bank, and if known, World Bank policies relevant to the project;
- e) attempts to bring the matter to the attention of the World Bank staff, and level of satisfaction with the response; and,
- f) a clear statement requesting the Inspection Panel to investigate the matters.⁷³

Following the request for inspection, the eligibility of the complaint, and a recommendation on whether to investigate are considered. This second phase of the procedure takes about eight weeks.⁷⁴ First, the Panel determines whether the request for inspection is admissible,

⁷⁰ Global Reach (*The World Bank*)

<<http://maps.worldbank.org/p2e/mcmap/map.html?code=&level=&indicatorcode=0553&title=Global&org=ibrd>> accessed 01 April 2015.

⁷¹ WBIP Operating Procedures (n 67) 11.

⁷² WBIP Resolution, art. 12.

⁷³ World Bank Inspection Panel, How to File a Request for Inspection to the World Bank Inspection Panel General Guidelines

<http://ewebapps.worldbank.org/apps/ip/Documents/Guidelines_How%20to%20File_for_web.pdf> accessed 10 March 2015.

⁷⁴ WBIP Operating Procedures (n 67) 12–13.

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inadmissible, or requires more information. If the request is admissible, the management of the World Bank responds to the request, providing its view of whether or not the claims of harm are attributable to the Bank, or exclusively to external factors. The Bank also provides evidence of current or future compliance with the relevant OP&Ps. Following the management's response, the Panel determines whether or not to recommend an investigation to the Executive Directors. During this time, the Panel may conduct an on-site investigation, and meet with the requesters, the representative of the borrower of World Bank funds, and relevant Bank personnel.⁷⁵

If an investigation is recommended by the Panel and approved by the Executive Directors, the third phase of the procedure—the investigation—begins. An investigation plan is established over the course of four-to-six weeks, and then the Panel is generally given six months to conduct its investigation. The Panel reviews project documents, conducts a site visit, meets with the requesters, requests information from relevant parties, interviews Bank staff, and so forth. The Panel cannot stop the progress of the project under investigation, but may bring concerns of immediate or irreversible harm to the attention of the Bank for the Bank to respond. Following the investigation, the Panel will compile a report.⁷⁶

Following the investigation, the fourth phase of the Panel's process begins, with the Panel submitting its report to the Bank Management. Within six weeks, management submits its recommendation, which is usually a proposal of actions for the Bank to take in response to the Panel's findings. The Executive Directors then meet to approve the management's action plans. The Panel then informs the requesters of the actions approved by the Executive Directors, and makes the relevant reports publicly available, and when possible, translated into the language of the requesters. As a result of the investigations, some projects have been cancelled, but for those projects that carry on, results have been mixed.⁷⁷

The Panel has brought about three significant benefits in regards to the accountability of the World Bank for harms caused by its projects. First, the Panel has

⁷⁵ *ibid* 19.

⁷⁶ *ibid* 21.

⁷⁷ Clark (n 12) 219.

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increased awareness of the OP&Ps amongst the Bank's staff. As a result, the staff have not only adhered more closely to the OP&Ps to 'Panel-proof' their projects, but have also increased transparency and participation in the drafting of the OP&Ps.⁷⁸ Second, the OP&Ps have been declared as internally binding amongst the Bank's staff, and failure to meet the standards can result in a Panel investigation.⁷⁹ As such, the OP&Ps have been transformed from being mere policies into also acting as a performance metric. Third, the WBIP has brought about the recognition of a relationship between an individual and an IO, which had not been the case prior.⁸⁰

In spite of its benefits, the Panel also has its shortcomings. First, the Panel is unable to recommend remedies, let alone make binding recommendations. This means that, in theory, the World Bank could ignore the Panel's report.⁸¹ Second, the Panel has a limited capacity for follow-up, with limited oversight of the Bank's responses to the investigation. In many cases, it is left uncertain whether or not the Bank adequately addressed the underlying problems that prompted the investigation in the first place.⁸² Third, the above-mentioned benefit of staff attempting to 'Panel-proof' projects has arguably created a culture where staff focus on 'checking off' procedural elements of a project, rather than taking the initiative to go 'above-and-beyond' and ensure that projects leave the best substantive legacy possible. Fourth, concerns have been raised about the roles of the parties that bring the complaint in the investigation. While these parties are interviewed by the Panel, and kept informed by the Panel throughout the investigation, they do not appear to have a role (formally at least) in the creation of remedial policies.⁸³ Finally, it has recently been suggested that access to the WBIP is only truly available in states that already allow for a robust civil society to monitor for abuses in the first place.⁸⁴ As such, the question of whether effective access to justice remains open.

⁷⁸ Bradlow and Naudé-Fourie (n 16) 128.

⁷⁹ Ibrahim F.I. Shihata, 'The World Bank Inspection Panel: In Practice' (2nd edn, World Bank 2000) 43–47.

⁸⁰ Ellen Hey, 'The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law' (1997) 2 *Hofstra Law and Policy Symposium* 61, 70.

⁸¹ Bradlow and Naudé-Fourie (n 16) 129.

⁸² *ibid*; Clark (n 12) 220.

⁸³ Clark (n 12) 219.

⁸⁴ Mark T. Buntaine, 'Accountability in Global Governance: Civil Society Claims for Environmental Performance at the World Bank' (2015) 59 *International Studies Quarterly* 99, 105.

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Despite its shortcomings, the WBIP has provided an avenue for groups affected by an IO to voice their concerns about projects that negatively affect them, without resorting to a state that may be unable or unwilling to assist them. Similar bodies have been developed by other development banks.⁸⁵

3.2.4. Other Accountability Forums—The Ethics Committee and the Sanctions

Board

The World Bank has other accountability forums. I will address two relevant ones: The World Bank Ethics Committee and the World Bank Sanctions Board. Its mandate is to examine allegations of misconduct against the Executive Directors (and similar personnel) and the President of the World Bank.⁸⁶ The Ethics Committee is comprised of three Executive Directors, who are appointed by the Executive Directors for two-year terms.⁸⁷ Perhaps the largest case to-date has been the investigation of former World Bank President Paul Wolfowitz for a romantic relationship with an employee at the World Bank.⁸⁸

The other relevant accountability mechanism is the World Bank Sanctions Board. The mandate of the Sanctions Board is to examine “Sanctionable Practices”, which includes corruption, fraud, coercion, collusion, or obstruction in by actors involved in World Bank-financed projects.⁸⁹ The broader World Bank sanctions system includes two bodies: the Suspension and Debarment Officer (‘SDO’), and the Sanctions Board. There is one SDO for each major component of the World Bank Group, including one for the IBRD/IDA.⁹⁰ The Sanctions Board is comprised of four members external to the World

⁸⁵ Ellen Hey, ‘The World Bank Inspection Panel and the Development of International Law’ in Nerina Boschiero, Tullio Scovazzi, Cesare Pitea and Chiara Ragni (eds), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (Springer 2013) 731–32.

⁸⁶ World Bank, ‘Ethics Committee and Procedures’ (2003) art. 1. *See also* World Bank, ‘Code of Conduct for Board Officials’ (2007).

⁸⁷ *ibid* art. 2.

⁸⁸ World Bank, ‘Second Report of the Ad Hoc Group’ (2007); Steven R. Weisman, ‘Bank’s Report Says Wolfowitz Violated Ethics’ *New York Times* (New York, 13 May 2007) <http://www.nytimes.com/2007/05/15/washington/15wolfowitz.html?n=Top%2FReference%2FTimes%20Topics%2FSubjects%2FE%2FEthics&_r=0> accessed 16 July 2015.

⁸⁹ World Bank, ‘World Bank Sanctions Procedures’ (2011) Section 1.02(a).

⁹⁰ World Bank, ‘Suspension and Debarment Officer/Evaluation and Suspension Officers’ (*World Bank*) <<http://go.worldbank.org/OQBQTFFF10>> accessed 7 July 2015.

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Bank (and who must have had no affiliation with the Bank in the past), and three members internal to the Bank.⁹¹

The sanctions procedure, in short, begins with a complaint of the conduct of an actor to the Integrity Vice President of the World Bank. If the Integrity Vice President finds sufficient evidence to support a finding of a “Sanctionable Practice”, the matter is referred to the appropriate SDO to make a finding on the preponderance of the evidence, whether a “Sanctionable Practice” occurred.⁹² If the actor wishes to contest the findings or the sanctions, the matter is then sent to the Sanctions Board for a *de novo* review. The Sanctions Board then makes a finding, on the preponderance of the evidence, as to whether or not a “Sanctionable Practice” occurred.⁹³ If a corporation or individual is found to have engaged in a “Sanctionable Practice”, the consequences may include a reprimand, debarment, and payment of restitution.⁹⁴ Corporations and individuals that are debarred are put on a public list.⁹⁵ Since 2011, the Sanctions Board has also published their full decisions.⁹⁶

3.3. Similarities and Differences between the IOC and the World Bank

To examine the similarities and differences between the IOC and the World Bank in a systematic fashion, I will use the four elements of accountability introduced in Chapter One as a framework: (1) the actors being held to account, (2) the identity of the projects the actors engage in, (3) the forums to which the actors are accountable, (4) the responses each actor has taken in regards to meeting their minimum moral responsibility, and (5) the consequences the actors face for their successes and failures.

⁹¹ International Bank for Reconstruction and Development and International Development Association, International Finance Corporation, and Multilateral Insurance Guarantee Agency, ‘Sanctions Board Statute’ (2010), art. 5.

⁹² ‘World Bank Sanctions Procedures’ (n 89) Section 4.01. The Suspension and Debarment Officer is known as the “Evaluation Officer” in the documents.

⁹³ *ibid* Section 8.01.

⁹⁴ *ibid* Section 9.01.

⁹⁵ World Bank, ‘World Bank Listing of Ineligible Firms and Individuals’ (*World Bank*) <<http://www.worldbank.org/debarr>> accessed 7 July 2015.

⁹⁶ ‘World Bank Sanctions Procedures’ (n 89) Section 10.01. *See also* World Bank ‘Sanctions Board Decisions’ (*World Bank*) <<http://go.worldbank.org/58RC7DVWW0>> accessed 7 July 2015.

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The actors being held to account for this analysis are the IOC and the World Bank. This section will compare their legal personality, membership, and how they conduct their projects. The IOC is an NGO, and is *de jure* immune from domestic legal proceedings. However, through a hands-off approach from states,⁹⁷ and indemnity provisions in the Host City Contract,⁹⁸ the IOC is likely to be *de facto* immune from domestic legal proceedings. It is unlikely that an individual harmed by the Olympic Games could bring a claim against the IOC in a domestic court. The World Bank is an IO, with all of the immunities accorded to an IO. In terms of membership, the IOC does not have states members, and the members of its 'board', the Session, are co-opted by incumbent members of the IOC Session. The World Bank does have states members, and its Board of Governors is made up of representatives of those states. However, the Bank does not adhere to a one-state, one-vote principal, but instead uses a system where some states members wield significant influence based on their funding commitments.

Both organisations do not carry out the actual projects they oversee themselves, but act as principals, coordinating and overseeing the conduct of the agents they delegate to. However, the principal-agent relationship differs. The IOC is a sole principal overseeing a collection of agents. The IOC's interests are the organisation of a successful Olympic Games. The IOC sets requirements of potential hosts, and selects a host based on those requirements. Those who are responsible for putting on the Olympic Games include the NOC, the OCOG and the Host City. The NOC and OCOG are considered part of the Olympic Movement, and the OCOG even has members of the IOC on its board. The World Bank is often one of many principals working with a single agent. The World Bank does not seek agents to carry out a particular project on its behalf, but instead lends money for projects that it believes to be meritorious. The World Bank may also be one of many principals, as other investment and development organisations work with the particular project.

Second, the interests of the IOC and World Bank are shaped by the timeliness and the importance of their projects. The IOC has a significant interest in seeing that each edition of the Olympic Games takes place on time. Any delay in Games preparation, to

⁹⁷ *Infra* Chapter Three, Part 3.4.

⁹⁸ *Infra* Chapter Six, Part 2.3.2, 3.3.

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avoid the worst outcomes of the Games, increases the risk of an outright cancellation of the Games. As such, the IOC's interest is to see the Olympic Games held on time, and is willing to accept some of the worst outcomes of the Games to ensure that this happens. The World Bank's interest is in economic development more generally, as opposed to the success or failure of any particular project. If a project is delayed or even cancelled to ensure that the worst outcomes of the project do not come to fruition, this is not fatal to the World Bank. While the World Bank would like to see projects completed on time, ensuring that a project provides economic and social development is likely a higher-order interest.

Third, both organisations have a collection of accountability forums. The IOC has the Ethics Commission and the CAS, while the World Bank has the WBIP, the Ethics Committee, and the Sanctions Board, amongst others. The ethics bodies of the IOC and the World Bank are similar in that they investigate the conduct of high-ranking members (the IOC Session, and the World Bank's Executive Directors and President, respectively). They are also both comprised, at least partially, of members of the bodies that they are responsible for investigating. They are not likely to be useful for those who are harmed by the Olympic Games or World Bank projects, however, as misconduct of IOC members or World Bank directors is usually not an issue.

Of more interest are those fora where an external party may hold others accountable for harm. The CAS enables those who are in contractual privity with the IOC to hold the IOC accountable. As such, it is not an accessible forum for those outside of the relationship. The World Bank has two accountability fora, the Sanctions Board and the WBIP. The Sanctions Board holds private actors (firms and individuals) accountable for actions such as corruption, while the WBIP holds the World Bank accountable for following its OP&Ps. Both of these fora allow for complaints from individuals outside of the World Bank-borrower relationship. Also of note, while the CAS is an adversarial forum, the Sanctions Board and the WBIP are both investigatory bodies. While the Sanctions Board does make findings and impose sanctions, the WBIP makes non-binding findings, and does not have the power to impose sanctions.

Fourth, the IOC and World Bank have responded differently in regards to meeting their normative obligations. The IOC has only made a modest attempt to live up to its

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minimum moral responsibility. Although the IOC added language on environmental sustainability to the Olympic Charter in the early 1990s,⁹⁹ other worst outcomes of the Olympic Games have only recently begun to receive attention in Agenda 2020. By comparison, the World Bank has been more proactive. It established the WBIP in 1993 to hold the Bank accountable for following its own OP&Ps, some of which have human rights implications. This was almost twenty years before the *Draft Articles on the Responsibility of International Organizations* suggested that an IO such as the World Bank has a responsibility to not violate international law and to remedy such violations.¹⁰⁰ While the World Bank has worked, with mixed success, to meet its minimum moral responsibility, the IOC has only recently begun to address the issue.

Fifth, as of this writing, the IOC does not face explicit consequences for failing to meet its standards, or in a more general sense for the worst outcomes of the Olympic Games. It is possible that the IOC may suffer a loss of reputation, or of legitimacy. These may lead to a loss of sponsors, or governments willing to spend money to hold the Games. However, given the IOC's monopolistic position, this is not necessarily the case. The CAS does possess the power to sanction the IOC, however. Thus, the possibility for formal consequences exists, although it is not yet available. In regards to the World Bank, the Panel cannot impose formal sanctions upon the Bank. However, if the Bank ignores the advice of the Panel, it runs the risk of reputational harm, and a loss of legitimacy, similar to the IOC. However, the Bank may also face consequences in the form of member states, in particular the United States, who reduce funding to the Bank if the Bank does not comply with its standards, or ignores the Panel.

Overall, the World Bank and its Inspection Panel provides a useful benchmark for the IOC. The IOC falls short in accountability in comparison to the World Bank, as those affected by the Olympic Games have no recourse to the members of the Olympic Movement at the moment. As such, the consequences for the IOC are minimal. However, both organisations have little in the way of positive international legal standards, and this was certainly the case when the World Bank set up the WBIP. The next section explores

⁹⁹ Olympic Charter (n 7) Rules 2.3, 2.13.

¹⁰⁰ International Law Commission, *Draft Articles on the Responsibility of International Organizations* (United Nations 2011) arts. 30, 31.

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some of the reasons why the World Bank opened itself up to greater accountability than the IOC is doing.

3.4. Explanation for the Differences

There are many potential reasons to explain why the World Bank undertook a comprehensive reform, establishing the WBIP, while the IOC has moved forward with the decidedly less-ambitious Agenda 2020.¹⁰¹ As an overall explanation, it is possible that the amount of legitimacy required by the World Bank and the IOC to carry out their mandates played a role. As discussed in Chapter Two, the IOC requires a moderate amount of legitimacy to carry out its mandate. The World Bank likely requires a higher amount of legitimacy, due to its role in development ('high politics'), and the possibility of an alternative regime, discussed below. As a result, possible particularised explanations for the differences between the IOC and the World Bank include: (1) the role of member states and the independence of the organisations, (2) the existence of an alternative, and (3) the institutional integrity of the World Bank projects versus the Olympic Games, and (4) the identities of the individuals who are responsible for the conduct of the organisation.

First, the World Bank faced pressure from states members, particularly from the United States. The United States, as the largest shareholder in the World Bank, consistently passed legislation requiring the World Bank to improve its transparency, and its respect of various human rights, or else it would restrict funding to the Bank,¹⁰² a tactic that continues through 2015.¹⁰³ There is no similar state leverage mechanism over the IOC unless states either boycott the Games or collectively refuse to host the Games. However, both of these situations are unlikely to happen. First, states do not always have control over the NOCs, who are in charge of sending athletes to the Games, rendering a boycott difficult. The 1980 boycott in particular saw the United States, which has a highly independent NOC, lead the

¹⁰¹ Jens Seger Andersen, 'IOC's Agenda 2020: A Cautious Answer to Terrifying Challenges' (*PlaytheGame*, 09 December 2014) <<http://www.playthegame.org/news/comments/2014/iocs-agenda-2020-a-cautious-answer-to-terrifying-challenges/>> accessed 05 June 2015.

¹⁰² Ian A. Bowles and Cyril F. Kormos, 'The American Campaign for Environmental Reforms at the World Bank' (1999) 23 *Fletcher Forum of World Affairs* 211.

¹⁰³ 'US Congress Blocks World Bank Move to Slash Safeguards' (*YaleGlobal*, 12 January 2015) <<http://yaleglobal.yale.edu/content/us-congress-blocks-world-bank-move-slash-safeguards>> accessed 8 July 2015.

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boycott, while the United Kingdom met great resistance from its NOC, and other states which exercise more control over their NOCs than the USA avoid taking a stance on the issue by deferring to their NOCs.¹⁰⁴ Second, the boycotts of the 1980s did not achieve their goals and are considered to be failures.¹⁰⁵ Although sponsors or broadcasters could withdraw, these come with the obvious contractual complications, and a reserve army of alternative sponsors and broadcasters who would gladly take their place. In regards to a boycott of hosting the Games, the perceived benefits of hosting the Games are simply too large for a state to resist, and defect from any plan of a boycott.

Second, the possibility of an alternative institution may have played a role. World Bank-funded projects are also funded by a variety of other actors, including other development banks, other international actors, private actors, and states.¹⁰⁶ Therefore, it is possible, although not ideal, for states to turn to other sources of funding for their development projects. The cost of exist is simply not applying for Bank funds, and either not carrying out the project, or seeking funds elsewhere. In addition, China has recently spearheaded the creation of the Asian Infrastructure Investment Bank, whose Articles of Association were signed in June 2015.¹⁰⁷ The capital of the Asian Infrastructure Investment Bank is relatively small, at \$50 billion (compared to the World Bank's \$200 billion). However, it is seen as an alternative to the US-dominated World Bank and the Japan-led Asian Development Bank.¹⁰⁸ However, when it comes to international sport, the Olympic Movement is a monopoly. While there are other multi-event sporting events (e.g., the Commonwealth Games), these events work in conjunction with the Olympic Movement. Thus, the World Bank was faced with the need to reform, lest states defect, while the Olympic Movement does not have such a large concern.

¹⁰⁴ David B. Kanin, 'The Olympic Boycott in Diplomatic Context' (1980) 4 *Journal of Sport and Social Issues* 1, 8–11.

¹⁰⁵ Scott Rosner and Deborah Low, 'The Efficacy of Olympic Bans and Boycotts on Effectuating International Political and Economic Change' (2009) 11 *Texas Review of Entertainment and Sports Law* 27, 75.

¹⁰⁶ World Bank, 'What We Do' <<http://www.worldbank.org/en/about/what-we-do>> accessed 17 July 2015.

¹⁰⁷ Asian Infrastructure Investment Bank, 'Articles of Agreement' (2015) <<http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/201506/P020150629360882722541.pdf>>.

¹⁰⁸ See Clifford Coonan, 'Countries Sign Up for China-Led Asian Infrastructure Investment Bank' *Irish Times* (Dublin, 6 July 2015) <<http://www.irishtimes.com/business/personal-finance/countries-sign-up-for-china-led-asian-infrastructure-investment-bank-1.2275282>> accessed 7 July 2015; Jane Perlez, 'China and 56 Partners, but Not U.S., Inaugurate New Asian Bank' *New York Times* (New York, 30 June 2015) A10.

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Third, a difference in the problems faced by the World Bank and the IOC relates to the institutional integrity of the institutions. Many of the projects financed by the World Bank did not even achieve the basic development goals they set out to accomplish, the World Bank's legitimacy was under great strain. Meanwhile, every edition of the Olympic Games has been successfully held—as in, they actually took place—since the Second World War. Although there have been problems that have marred the Games, the IOC has at least achieved its mandate of “ensuring the regular celebration of the Olympic Games”. Since cities are still bidding to host the Games, the IOC's legitimacy, although a bit shaky as discussed in Chapter Four, is not undermined.

Finally, the particular identities of the decision-making bodies may be a factor in the difference. For instance, World Bank Governing Board members are finance ministers or central bank governors, and are used to being held accountable to some degree. However, IOC members are not necessarily accustomed to democratic accountability through their positions as royalty, or their career spent mostly in sport or the private sector.

4. Towards an Accountability Forum for the Olympic Games

The purpose of the comparative analysis above was to examine how another global governance actor has addressed an accountability problem, and what lessons might be learned by the IOC. The most significant element of the World Bank reforms is the creation of the WBIP. Standing monitoring bodies, such as the WBIP, have since become viewed as useful tools for global administrative actors.¹⁰⁹ Might the WBIP provide insight for the IOC into a means to improve its accountability? Could an inspection-panel style monitoring body provide some oversight over the IOC and the Olympic Games? This section will consider issues that may apply to both a new stand-alone accountability forum, and to reforms of the CAS if the CAS were to be an accountability forum for the Olympic Games.

When considering an accountability forum, Eisuke Suzuki and Suresh Nanwani have suggested several principles that an accountability forum should satisfy: transparency,

¹⁰⁹ See, e.g., Kristin L. Retherford, ‘Regulating the Corporate Tap: Applying Global Administrative Law Principles to Achieve the Human Right to Water’ (2013) 88 *Indiana Law Journal* 811, 830.

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procedural due process, economy and efficiency, realistic expectations, and redress.¹¹⁰ To these elements, I would add two more: timeliness and independence.

Transparency is a key component of an accountability forum. The WBIP is an example of a transparent accountability forum, publishing requests, investigations, decisions, etc., in an easy-to-use format on its website. The relevant documents are also translated into local languages. Generally-speaking, the IOC and the Olympic Games are attempting to introduce more transparency into their processes and procedures, detailed in Chapters Five and Six. However, as discussed in Chapter Five, the IOC needs to make a greater effort to ensure that documents are made available in local languages. The commitment of the IOC to transparency appears strong, and it would be reasonable to expect that an accountability forum would be similarly transparent. When considering the CAS, its decisions are confidential, unless the parties agree to it, or the President of the Ordinary Arbitration or the Appeals Division so decides.¹¹¹ Hearings are generally conducted in English or French, but a hearing may be conducted in another language.¹¹² The CAS may pass along the costs of translation to the parties.

Second, an accountability forum should satisfy procedural due process. The WBIP ensures procedural due process by working to hear all sides of the investigation. One criticism of the Panel in this regard is the lack of an adversarial process, which may bring more information to light.¹¹³ However, an adversarial process can damage the relationship between the parties involved, and often requires a declaration of who is ‘right’ and who is ‘wrong’. An open-ended investigation allows for a more nuanced conclusion, and is more akin to a negotiation, uncovering the interests and concerns of the parties involved. While a case could be made that an investigation into causation of the ‘worst outcomes’ of the Olympic Games could be difficult, given the ‘many hands’ involved in organising the Olympic Games, it must be noted that the World Bank often works with multiple parties, and multiple organisations often fund the same development projects. In the case of the

¹¹⁰ Suzuki and Nanwani (n 16) 204–06. The authors also suggest ‘accountability’ and ‘development effectiveness’. I do not discuss ‘accountability’, as that is at least partially covered by the other elements, while ‘development effectiveness’ is not vital for the IOC.

¹¹¹ CAS Statutes, S19, R43.

¹¹² *ibid* R29.

¹¹³ *See* Fujita (n 16) 212.

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Olympic Games, the IOC is likely to have a greater degree of control over what standards are adhered to. The largest problem of ensuring due process might be the practical problems of ensuring that individuals who are at risk or who have suffered harm are not barred by the state from working with the panel—again a problem that the WBIP already has to cope with. The CAS would likely to be able to ensure due process to the parties, but with the risk of relationship damage that comes with an adversarial hearing, as described above. However, the CAS does engage in mediation, which may bring the process closer to a Panel-like investigation.

Third, an accountability forum should be economically sound. Cost-effectiveness matters for the organisation. But, I also suggest that such a mechanism should also not be cost-prohibitive for those trying to access the mechanism. What might such a mechanism cost? From 1 July 2013 to 30 June 2014, the annual budget of the WBIP was \$3,625,879.¹¹⁴ This is a drop in the bucket compared to the billions of dollars spent to prepare for the Olympic Games. The IOC itself had funds of just under \$2 billion in 2012, and revenues of over \$3 billion.¹¹⁵ Unlike World Bank projects, the Olympic Games happen in only a select few locations, with four cities preparing for the Summer and Winter Olympics at any given time (and two to three more for the Youth Olympic Games). As such, it is likely that such an accountability forum could be fully-funded by the Olympic Movement, and be economical. Or, funding could be divided between the host state and the Olympic Movement, similar to the arrangement for the WADA. The CAS, as it is currently constituted may be less economical. The parties are expected to pay the costs of the arbitrators. This may not be possible for, say, migrant workers seeking redress, and may lead to a situation where a complaint may not be brought simply on the basis of affordability. However, the CAS could draw on a pool of funds from the Olympic Movement and/or governments to allow indigent complainants to access the CAS.

Fourth, the work of any accountability forum must be timely. Although World Bank projects have projected completion dates, they are not necessarily time-sensitive. If a project is delayed due to an investigation or the need to remedy harms, it may not be fatal

¹¹⁴ The World Bank Inspection Panel, Annual Report: July 1, 2013 – June 30, 2014 (2014) 72.

¹¹⁵ International Olympic Committee, *Building a Legacy Through Sport: IOC Final Report 2009-2012* (2013) 57, 60.

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to the enterprise. Even with this in mind, Panel investigations generally do not halt a project, unless there is imminent harm.¹¹⁶ However, the Olympic Games have a concrete date for preparation. In several editions of the Games, preparation has been “down to the wire”, with facilities completed just weeks (or days) before the Games began. Any delay, no matter how slight, might prevent the facilities from being completed on time. The concern then, would be that opposition groups could use the accountability forum to slow down preparations to the point that the city would have to abandon the Games. Similarly to the Panel, however, an Olympic accountability forum could still allow the project to continue, absent irreversible harm. Timeliness also relates to those who are harmed. While the one-year timeline of the Panel might be too long for the Olympic Games, other procedures for expedited investigations could be put into place.

Fifth, an accountability forum must be independent. Independence is a multi-faceted element, involving procedures, appointments, finances, and the like. The WBIP is not fully independent from the World Bank. However, Panel members are not World Bank employees, nor are they associated with the Bank otherwise, and the Panel manages its own budget. In translating independence to the Olympic Movement, concerns arise. Other accountability forums, such as the Ethics Commission have had limited independence, although recent steps have been taken to improve upon this situation. The concern with an accountability forum is that, like the Ethics Commission or Coordination Commissions, it would be staffed with IOC members. What is needed is a truly independent mechanism, staffed with individuals from cities that had previously hosted sports mega-events, academia, the human rights advocacy community, and so forth. While the IOC may not be open to a truly independent monitoring mechanism, WADA may be a useful model in this respect. Funding and board control of WADA is not simply from sporting bodies, but is also 50% from governments. Perhaps a similar compromise would be acceptable to the IOC, retaining some control, but fostering more independence than the Commissions. However, if states are the ones fostering the worst outcomes of the Olympic Games, then it is best not to have the host state controlling such an accountability forum either. In this case, the CAS fares well. Although the *Pechstein* case raises some concerns over the

¹¹⁶ WBIP Operating Procedures (n 67) arts. 58–59.

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process to appoint arbitrators, and some concerns remain about the independence of the CAS, the CAS is likely to be sufficiently independent these purposes.

Finally, any expectations for an accountability forum must be realistic. A mechanism is unlikely to be perfectly independent, low-cost, perfectly transparent, ensuring complete due process and do all of it in a timely manner. Some of these elements will have to give way to make room for others. Additionally, the goals of an accountability forum should be realistic. The goal of an accountability forum for the Olympic Games, like this thesis, cannot be to ameliorate human rights problems generally in the host country. Nor can it be to improve governance of the Olympic Movement in a broad sense. Such a mechanism, like the WBIP, may only have powers of recommendation, not sanction, and thus may be limited in its institutional power. The CAS may possess greater authority over the members of the Olympic Movement, but would not necessarily have authority over the state. The purpose of the accountability forum is not necessarily to solve the problem of the worst outcomes of the Olympic Games, although that is an ideal, but to hold others to account for doing, or failing to do so.

As such, an accountability forum based off the model of the WBIP, is likely to be able to work within the Olympic Movement. Particular attention would have to be paid to the independence of such a forum, as it would need to be insulated from both members of the Olympic Movement, and from the countries that are playing host to the Games.

5. Conclusion: World Bank Action and IOC Inaction

For years, global sport has seen itself as special. And in many cases, it is certainly a unique industry. However, this does not mean that global sporting organisations cannot learn from other global governance actors. This is particularly the case in addressing governance concerns such as accountability. This chapter has undertaken a comparative analysis of the IOC and the World Bank to inquire as to whether any lessons could be learned by the IOC in coping with accountability for human rights abuses caused by the Olympic Games.

The Olympic Games and World Bank projects share a striking similarity in both the reasons why cities and states seek them out, and also in their impacts—particularly in regards to risks the worst outcomes of their projects. However, the responses have been

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quite different. The World Bank responded to the crisis following the Morse Report by establishing the WBIP. The Panel is able to receive requests from groups of individuals who are at risk of harm, or who have been harmed, by World Bank projects, bypassing the state. The Panel has proven to be an innovative way of addressing accountability, although it certainly has its shortcomings. The IOC on the other hand, has not done much. Aside from some standards put into the host selection process and Host City Contract that address human rights, discussed in Chapter Six, the IOC remains unaccountable in the event of the worst outcomes of the Games. The Inspection Panel can serve as a model for the IOC to adopt, keeping in mind the particularities of the IOC. The Panel as implemented by the World Bank provides a model of an in-house accountability forum, which the IOC has a history of creating, as shown by WADA, the IOC Ethics Commission, and the CAS.

This chapter has also shown the value that can be generated for sport institutions by looking outside of their own confines. Although sport institutions are unique to some degree, they are not *sui generis*. Given their role in global governance, it is not only reasonable to expect sport institutions to live up to the standards expected of other international institutions, discussed earlier in this thesis, but it is valuable to examine just how the other international institutions address problems of legitimacy and accountability. The conclusion to this thesis will discuss the legitimacy and accountability of the IOC more broadly, and set out potential directions for future reform and research.

Chapter Eight

Conclusion: Towards a More Accountable Olympic Movement

*And it ought to be remembered that there is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things, because the innovator has for enemies all those who have done well under the old conditions, and lukewarm defenders in those who may do well under the new.*¹

1. Introduction

International relations and international law have begun to move away from a state-centric worldview. International organisations, non-governmental organisations, transnational corporations, and individuals are increasingly examined and discussed. This includes a re-assessing of the responsibility of these actors for their actions. The recent drafts of the *Draft Articles on the Responsibility of International Organizations* and the Ruggie Principles are evidence of the movement to establish the accountability of IOs and TNCs for their actions.

Similarly, the IOC is re-assessing its approach to the Olympic Games. In the past, the IOC has focused primarily, if not solely, on the sporting aspect of the Games. The commercial element emerged in the late 1970s and early 1980s, with the on-going development of professionalism in sport, culminating in the heavily-commercialised 1984 Summer Olympics in Los Angeles. Since at least the mid-1990s, the concepts of ‘legacy’ and ‘sustainability’ have been key concepts of hosting the Olympic Games, promising long-term benefits to the host cities. However, the IOC is still fleshing out what precisely these concepts consist of. The IOC is also beginning to measure these concepts, and

¹ Nicolo Machivelli, *The Prince* (W.K. Marriott tr, Kindle edn, Project Gutenberg 2012) ch 6, loc 434.

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whether or not they have been fulfilled. The most recent attempt at improving this approach was taken in 2014, with Agenda 2020.

This thesis has examined the accountability of the IOC for the worst outcomes of the Olympic Games. These outcomes have included: the use of forced labour to construct Olympic venues, displacement of persons, environmental damage, and negative socio-economic and legacies. Examining and addressing this problem is not important solely for the Olympic Games. Such an examination also provides insight into how to improve accountability for global governance institutions, particularly those that are not IOs.

This final chapter of the thesis will conclude the research over four additional parts. Part Two will provide an overview of the problem addressed by this thesis. It will provide a summary of the research, and will answer the four research questions posed in Chapter One. It will also address some of the limitations of the research. Part Three will address the implications of this research, for global governance researchers, and for practitioners. Part Four suggests avenues for further research. Part Five will offer some final remarks.

2. The Research

2.1. Summary of the Research

This thesis began with a discussion of some of the problems surrounding the 2014 Sochi Winter Olympic Games. The Sochi Olympic Games were a ‘perfect storm’ of the worst outcomes of the Games, a monstrous mega-event that completely consumed an entire city bringing problems such as forced labour used to construct Olympic infrastructure, displacement and forced eviction of individuals to make way for the Games, and environmental damage. Although those who were affected should have been protected by the Russian state, the state was unable to assist, or was even complicit in causing these harms. The Sochi Games were also an example of the problems faced by global governance institutions, and those who find themselves affected by the decisions of these institutions. The IOC’s decision to select Sochi as the host of the Olympic Games was likely made without much local input, but greatly harmed the people of Sochi, as well as those who

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came to Sochi to work. Additionally, it was not the IOC, but agents of the IOC, or the Russian state, that carried out the actions that caused the harms mentioned. The Sochi Games laid bare the unaccountability of those who organised the Olympic Games to the IOC, and the unaccountability of the IOC to anybody for the conduct of the Olympic Games. These problems are core problems that global governance and global administrative law scholars are attempting to understand and address.

Chapter Two discussed the theoretical background of global governance, and a legal offshoot, global administrative law. However, the focus of the chapter was on legitimacy. For global governance institutions to be complied with over a long-term, they must be perceived as legitimate. This legitimacy must come from the actors that are regulated, but also states, peer institutions, and individuals who may be affected by the decisions. To better examine and assess legitimacy, I developed a framework based upon research into the legitimacy of NGOs and IOs. This framework set out three broad categories of examination: structural legitimacy, substantive legitimacy, and procedural legitimacy. Within each of these categories were particular elements, which were applied to the IOC and the Olympic Games over the following three chapters.

Chapter Three looked at the structural legitimacy of the IOC and the Olympic Games. Four particular elements were examined: the source of the IOC's authority, whether the IOC possesses subject-matter expertise, who is represented within the IOC, and to what degree the IOC is independent. This thesis found that the IOC, as a private NGO does not possess a democratic foundation for legitimacy. The IOC does possess significant subject-matter expertise in regards to the regulation of sport, along with other members of the Olympic Movement. The representativeness of the IOC Session, with its maximum of 115 members, co-opted by the IOC, with limited representation for athletes, IFs, and NOCs, with no states representatives, may not be sufficient to establish legitimacy. Finally, the IOC is a highly independent actor, one that is perhaps too independent, leading to claims that it is unaccountable. In regards to the Olympic Games, the Games rely on domestic authorities as much as sporting authorities. In this sense, the state is co-opted into various actions such as passing legislation, and providing financial guarantees to support the event, and reduce the risk borne by the sporting bodies. This situation also creates a

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‘problem of many hands’ where various actors are involved in the Olympic Games, and ultimate accountability is difficult to trace.

Chapter Four examined the substantive legitimacy of the IOC and the Olympic Games, and how this legitimacy may be undermined by the worst outcomes of the Olympic Games. Substantive legitimacy requires that an institution adheres to a minimal moral responsibility (i.e., does not violate basic human rights), and that it possesses institutional integrity (i.e., that it fulfills its mandate). The history of several recent editions of the Olympic Games contain many instances of the worst outcomes of the Games, including violations of labour rights of those who work on the infrastructure for the Games, evictions of individuals from their homes to make way for Games venues and supporting infrastructure (transport, hotels, etc.), and damage to the environment. Other social issues are also raised during the hosting of the Olympic Games. These results are evidence of the IOC and the Olympic Games failing to meet the standard of minimum moral responsibility. In terms of institutional integrity, the IOC and those who seek to bring the Olympic Games to the host city promise an improved economy, with stronger employment outcomes, or urban rejuvenation, amongst others. At best, these legacies are underwhelming, and at worst, the Olympics leave a city worse off than when they arrive. Leaving aside the damage caused by the worst outcomes of the Games, the way the Games are currently organised then, are unsustainable, and do not meet the institutional integrity of the IOC. These substantive legitimacy problems are exacerbated when the Games are held in emerging market economies. These countries often have weak accountability regimes and a weak rule of law. As such, individuals who are harmed by the Olympic Games are even less likely to receive protection and redress in these countries than those in advanced economies.

Chapter Five considered the procedural legitimacy of the IOC and the Olympic Games. Procedural legitimacy requires that decision-making be rational, consistent and impartial. It also requires that the institution have appropriate accountability mechanisms in place that encourage transparency and public participation, and allow for review (judicial or otherwise). The process that the IOC uses to select the host of the Olympic Games now operates with a high degree of transparency. More problematic is that there is no mechanism to ensure public participation in the host selection process. As bids to host the

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Olympics are often spearheaded by political and business elites, the possibility that an Olympic Games is bid on, and hosted in a city without public participation is significant. The host selection process does not necessarily require a review mechanism, absent claims of corruption or dishonest behaviour.

Chapter Six analysed the relationship between the IOC and those who organise the Games. In doing so, this chapter uses a principal-agent approach. In this case, the ‘principal’ is the IOC, and the ‘agents’ are the host country’s NOC, the OCOG, and the Host City itself. These three organisations actually organise the Games, including hiring agents of their own. These organisations either oversee or participate in some of the worst outcomes of the Olympic Games. The IOC provides a weak mandate to protect against some of these outcomes, and engages in oversight of the Games. However, these are weak mechanisms. In addition, the IOC can also remove the Games from the host in certain situations, but this is not likely to happen as it is too costly to the IOC. As such, the IOC needs to reconsider its relationship with its agents, and what mechanisms it uses to ensure that the agents carry out the Games to its satisfaction, including ensuring that the ‘worst outcomes’ do not materialize.

Chapter Seven addressed the issue at the core of this thesis, the accountability of the IOC itself for the worst outcomes of the Games. It considered the problem of what happens when the worst outcomes of the Games occur, but the IOC fails to take actions to prevent or remedy those outcomes. In examining means of addressing the problem, the chapter compared the IOC to the World Bank. The World Bank’s accountability crisis of the 1980s bears a strong resemblance to the IOC’s current problems, as World Bank projects resulted in displacement of persons, and environmental damage, while also not fulfilling the mandate of promoting economic and social development. The World Bank engaged in a series of reforms, most notably the creation of the WBIP. This chapter examined the accountability forums currently available to the IOC, namely the IOC’s Ethics Commission and the CAS. This chapter then examines the WBIP, and examines whether a similar forum might work within the context of the Olympic Movement and the Olympic Games.

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2.2. Research Questions and Answers

In the Introduction to this thesis, I set out four research questions to answer:

1. Why should the IOC be held accountable for the worst outcomes of the Olympic Games? Should other actors be held accountable?
2. To what extent is the IOC accountable? Why should the IOC choose to be more accountable than it currently is?
3. How might amending the process that selects the hosts of the Olympic Games improve accountability for human rights abuses?
4. Are other accountability mechanisms within the broader world international sport sufficient to improve the IOC accountability? If not, are alternative accountability mechanisms available to improve the IOC's accountability?

The first two questions will be addressed in the next section, while the latter two questions will be addressed in the section following.

2.2.1. Accountability of the IOC

In answering the first question, this research found little in international law that supports holding the IOC responsible for protecting human rights in a general sense. Soft law instruments such as the *Draft Articles on the Responsibility of International Organizations* and the Ruggie Principles suggest that international organisations and trans-national corporations, respectively, have human rights obligations. If nothing else, the activities of these actors, and those of their agents, should not violate human rights. It does not take a great logical leap to move from recommendations for IOs and TNCs to similar recommendations for NGOs, particularly those engaged in global governance activities. As such, it can be reasonably expected of the IOC that its activities, and the activities of those who perform tasks on behalf of the IOC (e.g., those who organise the Olympic Games), should not engaging in activities that bring about the worst outcomes of the Games.

However, the notion that the IOC should improve its accountability for the worst outcomes of the Games based on non-binding recommendations for other categories of actors is persuasive, but certainly not binding. Why the IOC might want to improve its accountability is perhaps better answered by the second question, which asks why the IOC should feel internally obliged to do so. The answer to that question boils down to the

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legitimacy of the IOC, and for global governance institutions generally. This thesis has argued that legitimacy is the optimal way for institutions to engender compliance amongst those whom it is attempting to regulate, as coercion, or appealing to the self-interest of regulated actor is too costly, and comes with too high a risk of defection from the institution. However, a risk remains that actors will not perceive the institution as legitimate. In the case of the IOC and the Olympic Games, if actors do not perceive these institutions as legitimate, they will be less willing to accede to the demands placed on them by these institutions. The outcome of this can be seen in the withdrawal of many cities that had initially sought to bid for the 2022 Winter Olympic Games. Several of these cities were forced to withdrawal from bidding due to local opposition to the Games, fears stoked by the outcomes of Sochi.

Examining three elements of legitimacy, structural, substantive, and procedural, this thesis suggests that procedural legitimacy is perhaps the most malleable by the actors to improve legitimacy. In particular, if an institution improves its accountability mechanisms, it is possible to enhance the perception of its procedural legitimacy, and perhaps even produce outcomes that improve its substantive legitimacy. Thus, it is in the IOC's interest to improve its own accountability, but also the accountability of those who organise the Games: the NOC, the OCOG, the Host City, and their agents.

2.2.2. Improving the IOC's Accountability

The research question as to improving the accountability of the IOC focused on the process used to select the host of the Olympic Games. This process was considered as the point of departure since it would be the first point in hosting the Olympic Games where the IOC could ensure that the hosts avoid the worst outcomes of the Games. The host selection process itself is also problematic. As discussed in Chapters Four and Five, decisions to host the Olympic Games are often not made by the citizens that stand to be affected by the Games. Instead, these decisions are made by political and business elites, reducing the scope for public participation.

In terms of improving the accountability of the host selection process, the research found the process to be reasonably transparent, improved by reforms taken in 1999 following the Salt Lake City corruption scandal. The questions asked by the IOC, and the

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bids submitted by the cities are often obtainable over the internet, although some improvements are required, particularly in making the documents linguistically-accessible in bidding cities' local languages. However, the host selection process does worse in considering public participation. The most significant faults in this area are the IOC not requiring much public participation, and the IOC sounding a note of caution about referenda following the submission of a bid. In addition, a low level of public support (below perhaps 80%) is often seen as fatal to a bid. However, these are not preclusions to public participation. As discussed in Chapter Five, public participation during the pre-bid, and bid phases may assist the creation of the bid by providing new ideas, and may reduce opposition to the bid. There is a risk that opposition to the bid may be fomented. However, public participation at an early phase of the bid would likely carry on through the actual preparation for the Games, which is likely to avoid some of the worst outcomes of the Games. Then, it should be up to the bid committee to make the case to the populace, before making the case to the IOC. The bid to host the Olympics in Boston for 2024 is providing an interesting test case on public participation, and one that will likely provide valuable lessons in the future.

In terms of the substantive of the host selection process, the IOC is adding sections that directly-address some of the worst outcomes of the Olympic Games. Questions on environmental sustainability have been around since the 1990s. Following Agenda 2020, in 2014, questions addressing issues of 'social sustainability', including displacement of persons, and labour rights for those who work on Games-related infrastructure, have been added. Although it will be years before the success of these questions is known, and they perhaps allow too much discretion on the part of those who organise the Games, it is a welcome first step.

However, this thesis also revealed the limitations of focusing on the host selection process. Since the IOC itself does not organise the Games, but delegates to a collection of agents, the roles of the agents should be considered. The NOC, OCOG, and Host City organise the Games, and do so with a great degree of discretion. Although it is helpful to examine the mandate the IOC sets out for these agents in the host selection process, the mechanisms that the IOC uses to monitor and impose consequences on these agents is

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deserving of attention. This research found that although the mandate the IOC set out for the agents is strengthening, particularly since Agenda 2020, the monitoring and enforcement mechanisms are lacking.

The fourth, and final, research question posed by this thesis asked whether accountability mechanisms within the Olympic Movement may be used to improve the accountability of the IOC for the Olympic Games. In the alternative, it asked whether other global governance institutions might provide an example of an accountability mechanism for the IOC to consider. First, and foremost, this research concluded that it would be highly unlikely for the IOC to be held to account in a domestic court, given the general ‘hands-off’ approach courts have given the IOC. Turning to the Olympic Movement, the research found that the CAS, as it is currently constituted, probably could not serve as an accountability forum for the Olympic Games. The major hurdles are the requirement of contractual privity, which is standard for arbitration, and the expertise of the CAS arbitrators in regards to human rights, socio-economic, and similar issues. This work has suggested some possibilities for CAS reform, but future research should be done on this topic.

In looking to international institutions, the World Bank was chosen as a comparator for the consideration of accountability forums. World Bank-funded projects, just like the Olympic Games, have been beset with a variety of problems, including displacement of persons, environmental damage, and poor development outcomes. To address this problem, one of the steps the World Bank took was to set up an accountability forum, the WBIP. The WBIP has had a mixed record of holding the World Bank accountable. It has created more transparency in the World Bank process, encouraged greater compliance by World Bank employees with Bank operational policies and procedures, and has provided an outlet for aggrieved groups of affected individuals to have their concerns known. However, the WBIP’s shortcomings include non-binding recommendations, and a lack of follow-through, amongst others. A WBIP-like forum would be useful for the Olympic Games for the same reasons it has benefitted the World Bank and those affected by its projects. However, one cannot simply transplant a WBIP-like forum into the Olympic Movement. In particular, guaranteeing the independence of the

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forum would have to be ensured, given the problems that the CAS and the IOC Ethics Commission have had with independence in the past.

2.3. Limitations of the Thesis

The choices made as to the design of this research create limitations. Four limitations of this research are particularly relevant: (1) presuming the interests of the IOC; (2) not addressing the IOC administration; (3) limited scope comparison with the World Bank; and (4) limited scope of comparison in regards to other actors.

First, this research relied on social constructivism as a primary theoretical basis to consider international actors. As such, the identities and interests of the actors must be taken into account when considering why they behave the way they do. However, for the ease of the research, I have presumed the identity and interests of the IOC. These presumptions have been supported by documentary evidence and historical analysis, and it has been acknowledged that the IOC is a complex actor. However, these are methodological limitations to ascertaining the identities and interests of the IOC. A more thorough way to examine the IOC would have been to conduct ethnographic research. This has been conducted to a minor degree with the IOC, where Christer Persson conducted surveys of thirty-nine IOC members to determine why IOC members vote for a particular Olympic Games host. That particular research was severely limited as it studied the host selection for the 2002 Winter Olympic Games, marred by the Salt Lake City corruption scandal.² In regards to the World Bank, Galit Sarfaty has conducted ethnographic research, conducting interviews with staff members, and working as a consultant and an intern with the Bank.³ By doing so, Sarfaty was able to address questions of norm adoption within the World Bank, namely why the World Bank had not adopted an overarching human rights policy. Additionally, it offers insights on how to bring about organisational change. This research builds off more theoretical research on organisational change more generally.⁴ Such ethnographic research could have been particularly valuable during the discussions of

² Christer Persson, 'The Olympic Games Site Decision' (2002) 23 *Tourism Management* 27.

³ Galit A. Sarfaty, 'Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank' (2009) 103 *The American Journal of International Law* 647.

⁴ Daniel L. Nielson and Michael J. Tierney, 'Delegation to International Organizations: Agency Theory and World Bank Environmental Reform' (2003) 57 *International Organization* 241, 245.

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Agenda 2020 by the IOC to gauge the adoption of a broader concept of sustainability for the Olympic Games.

Second, this research has ignored the IOC administration. This ignorance should not diminish the role or the work of the IOC administration. This thesis was concerned with the Olympic Games, an event that the IOC administration does play a role in, but not in the same vein as the NOC, OCOG, or Host City. However, there is very little (if any) scholarly work that examines the IOC's administration. Questions such as who is hired into the administration (Is it solely people with a sporting background? With a particular education level? External work experience? Particular nationalities?) might shed some light on how the IOC is run on a day-to-day basis, and what sort of influence the IOC administration has in comparison to the IOC members.

A third limitation of this research is the scope of the comparative study with the World Bank. This thesis examined the World Bank as a comparator, but examined only the WBIP as an accountability forum. The World Bank has other means by which it addresses its accountability. For instance, it maintains a Compliance Advisor Ombudsman for its private lending arms, the International Finance Corporation and Multilateral Investment Guarantee Agency. The World Bank has also engaged in public consultation when revising its core operational policies and procedures.⁵ The IOC has arguably done this with regards to Agenda 2020, but research needs to be conducted on the scope of the IOC's public consultative activities.

A fourth limitation is the scope of the comparative study. This thesis examined the World Bank. However, the World Bank is not the only international actor, and not even the only international development bank, that has undertaken reforms to improve its accountability. Other development banks have established accountability mechanisms, following the lead of the World Bank, and some have made changes, leaving these

⁵ Development Committee (Joint Ministerial Committee of the Boards of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries), 'Strengthening Governance and Accountability: Shareholder Stewardship and Oversight' (*World Bank* 2011)
<<http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22885978/DC2011-0006%28E%29Governance.pdf>> accessed 02 June 2015.

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mechanisms with their own strengths and weaknesses.⁶ Additionally, private accountability forums exist, such as the Forest Stewardship Council.⁷

3. Implications of Findings

3.1. Findings Related to Literature

Global governance scholarship, similar to international law and international relations scholarship, directs much of its work at international organisations. However, the IOC poses an interesting example of global governance. It is an NGO with global influence both over individuals it regulates, but also over states—particularly in regards to hosting the Olympic Games. The IOC is also an interesting case because of the high degree of autonomy that it possesses. The role of autonomy and delegation within international organisations has been studied in the past. However, the question of the degree of autonomy is one that should be studied further.

This research also reveals the value of using non-sport institutions to assist research in regards to sport. The world of sport often views itself as unique, mentioned several times throughout this research. However, the world of sport is actually part of a broad global governance regime. As such sport researchers should not be afraid to look outside of sport for models of governance, and non-sport experts on governance should not be afraid to examine sport.

Finally, this research suggests that global administrative scholars should pay attention to substantive regimes when possible. When examining domestic administrative bodies, a constitution that protects basic, substantive rights, in addition to a variety of other procedural and substantive laws, provides a backdrop of protection from administrative actors. However, these protections are not necessarily available in states with a weak rule of

⁶ Susan Park, 'Institutional Isomorphism and the Asian Development Bank's Accountability Mechanism: Something Old, Something New; Something Borrowed, Something Blue?' (2014) 27 *The Pacific Review* 217; Sanae Fujita, *The World Bank, Asian Development Bank and Human Rights* (Edward Elgar 2013). For a list of accountability mechanisms, see Ellen Hey, 'The World Bank Inspection Panel and the Development of International Law' in Nerina Boschiero, Tullio Scovazzi, Cesare Pitea and Chiara Ragni (eds), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (Springer 2013) 731–32.

⁷ Forest Stewardship Council, 'Who We Are' (*Forest Stewardship Council*) <<https://us.fsc.org/who-we-are.176.htm>> accessed 8 July 2015.

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law—states that often work with international institutions. In addition, there may be situations where the state is unable or unwilling to assert their law over the conduct of an institutional institution, which means that any substantive protection are at the whim of the institution. As such, if an institution's mandate does not contain protections of substantive rights, then global administrative scholars need to be aware of those shortcomings.

3.2. Practical Implications of Findings

The practical implications of this research are the suggestions for improvements in the accountability of the IOC. These findings are applicable not just to the IOC, but also to other international sporting organisations, and to those who hold the rights to and organise other mega-events (such as the World Expositions). These conclusions are not necessarily applicable *in toto*. Each sporting organisation, each event, and each host, has their own particular concerns. For instance, the host selection process for the 2018 and 2022 does have shortcomings in regards to transparency and public participation, but is also wracked with allegations of corruption, and at the time of writing is under criminal investigation by the Swiss authorities for that reason.⁸ Some may see the problems of corruption are ones that should be addressed prior to addressing issues such as transparency and public participation. However, I would suggest that improving transparency and public participation may reduce opportunities for corruption. But, what transparency and public participation mean for a FIFA World Cup, which takes place across several cities over an entire country, versus what transparency and public participation mean for an Olympic Games that takes place in one city, may be different.

The findings of this research focus primarily on the IOC, and its legitimacy as a global governance actor. However, the research has shown that other actors at the local level, the bid committees, the OCOGs, the host cities and states, are also vital to the Olympic Games and other sports mega-events. The IOC, as the rights-holder to the Olympic Games, must be accountable for the overall conduct of the Olympic Games. It cannot simply award an edition of the Games and then close its eyes and pretend the Games

⁸ Office of the Attorney General of Switzerland, 'The Office of the Attorney General of Switzerland seizes documents at FIFA' (*Schweizerische Eidgenossenschaft*, 27 May 2015) <<https://www.news.admin.ch/message/index.html?lang=en&msg-id=57391>> accessed 03 June 2015.

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are none of its business. However, those who organise the Games must adhere to various laws and standards to avoid the worst outcomes of the Games. As such, the burden is not solely on the IOC, and certainly not everything is the ‘fault’ of the IOC.

Importantly for sport, this research does not undermine or undo the independence of sport. Sports organisations are likely concerned about being more accountable, since accountability requires a forum to which an actor is accountable to. However, accountability does not necessarily involve a loss of independence. The example of the World Bank and its Inspection Panel shows how an ‘in-house’ accountability forum can be used. Of course, the Olympic Movement in-house accountability forums. However, the mandates of these fora are limited to particular organisations, (e.g., the IOC’s Ethics Commission), or are circumscribed by contract (e.g., the CAS). However, sporting authorities need not fear addressing issues such as human rights, or legacy outcomes in the belief that doing so somehow reduces their independence. In contrast, by addressing these issues, they are likely to improve their legitimacy, and make a stronger case for their continued independence. In addition, considering robust accountability mechanisms continues the work of helping the IOC transition from a nineteenth-century organisation, to one more suited for the problems, and opportunities, of the twenty-first century.

Finally, this research supports the work begun by Agenda 2020. Although this research is critical of some of the recommendations made in Agenda 2020, it is supportive of the general thrust of the project. It is my hope that this research can be used as a starting point for critical thinking about Agenda 2020, and to perhaps provide some suggestions or inspiration for more concrete implementation steps.

4. Further Research

Following this thesis, several avenues for further research present themselves. These suggested areas for research both build upon the work conducted in this thesis, and also fills in gaps that have been revealed by this research.

First, further research needs to be taken to examine the OCOGs. Throughout this research, various people I spoke with implored me to not forget the OCOG, since it is the actor that carries out the Games on behalf of the IOC. While my research focused on the

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IOC, Chapter Six did devote attention to the role of the OCOG and the Host City. However, it also highlighted a lack of primary research on the day-to-day operations of the OCOG, and how much on-the-ground influence it has. Questions that call for further research focus on two broad areas: the operations of the OCOG, and the OCOG's relationship with the IOC. First, how do OCOGs differ from Games-to-Games? Are there differences in political independence, in authority, in oversight, in expertise? Second, what is the IOC/OCOG dynamic? How does the OCOG balance the IOC's mandate with on-the-ground realities? Both of these research areas would require embedding into the OCOG, which may prove difficult. But by understanding the workings of the OCOG better, perhaps a more effective, on-the-ground solution to the accountability question can be considered.

Second, engagement of IOC members with the host selection process should be studied. The purpose of such a study would not be to determine why IOC members vote for a particular city. Instead, the focus would be on how informed IOC members are about a particular bid, and how engaged with the host selection process they are. It is trite to say that in an electoral democracy, many representatives do not read the legislation they vote on. Similarly, it is doubtful that IOC members read the bids submitted for the host selection process. If not, why not? What method would be more effective to ensure that IOC members receive the appropriate information?

Third, more on-the-ground research into public participation in the submission of a bid by a city would be valuable. While literature is emerging on the rise of anti-Olympic Games movements, largely through the work of Jules Boykoff,⁹ more attention needs to be paid to communities that would be affected by the Games, and the consultation they received from the authorities. While there are some studies on bid committees, these are often carried out in a *post-hoc* manner, and often only examine the bids that are successful at securing the right to host the Games.¹⁰ Ethnographic research into a bid, from

⁹ Jules Boykoff, *Activism and the Olympics: Dissent at the Games in Vancouver and London* (Rutgers University Press 2014); Jules Boykoff, 'Space Matters: The 2010 Winter Olympics and Its Discontents' (2011) 4 *Human Geography* 48. Other works include Richard Giulianotti, Gary Armstrong, Gavin Hales and Dick Hobbs, 'Sport Mega-Events and Public Opposition: A Sociological Study of the London 2012 Olympics' (2015) 39 *Journal of Sport and Social Issues* 99; Nicolien van Luijk and Wendy Frisby, '(Re)Framing of Protest at the 2010 Winter Olympic Games' (2012) 4 *International Journal of Sport Policy and Politics* 343.

¹⁰ There is an increasing number of studies that do examine 'failed' bids and their legacies. Ulf Strohmayer, 'Non-Events and their Legacies: Parisian Heritage and the Olympics that Never Were' (2013) 19 *International Journal*

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beginning-to-end would be ideal, but perhaps unlikely. Although the bid from Boston was shaping up to be an interesting case study in public participation, as the bid committee held public meetings in regards to the Olympic Games, and discussions were on-going about a referendum in the state of Massachusetts on supporting the Games,¹¹ the end of the bid has foreclosed this option for now. It appears that the other bids for the 2024 Games are minimizing the amount of public participation, perhaps in response to the demise of the Boston bid. Additionally, frequent requests for information by watchdog groups or the media, are opening the bidding process to a level of public scrutiny rarely, if ever, seen in Olympic City host selection.¹²

Fourth, and perhaps an obvious avenue for further research, is to examine other sporting events. The Olympic Games are in some ways a low-hanging fruit. A robust corpus of literature critically examining the Olympic Games has been developed over the past decades. Additionally, the IOC has made laudable strides at improving its transparency, documenting many aspects of the Games, and making those documents publically accessible. However, there are literally thousands of other sporting events. Of course, not every sporting event is likely to lead to the ‘worst outcomes’ as defined in this thesis. Hosting a stage of the Tour de France often has minimal overall impact, perhaps not much beyond minor environmental issues from garbage and carbon emissions.¹³ However, other events such as the FIFA World Cup, the International Ice Hockey Federation’s World Championships, or any other ambulatory sporting championship may lead to the ‘worst outcomes’. As such, while the findings of this research can presumably address other sporting organisations and events, it is not a given for every organisation and event.

of Heritage Studies 186; Heike C. Alberts, ‘Berlin’s Failed Bid to Host the 2000 Summer Olympic Games: Urban Development and the Improvement of Sports Facilities’ (2009) 33 *International Journal of Urban and Regional Research* 502; Helen Jefferson Lenskyj, ‘When Winners are Losers: Toronto and Sydney Bids for the Summer Olympics’ (1996) 20 *Journal of Sport and Social Issues* 392.

¹¹ Boston2024, ‘The Road Ahead’ (*Boston2024*) <<https://www.2024boston.org/process>> accessed 03 June 2015.

¹² See, e.g., Matt Stout, ‘Cambridge Company Hired to Review Boston 2024 Bid’ *Boston Herald* (Boston, 01 June 2015) <<http://www.boston.com/business/news/2015/05/27/new-boston-documents-look-stadium-plan/r0PmWHcYmMzpZawVsVdh1N/story.html>> accessed 03 June 2015; Kyle Clauss, ‘Here’s the Bid Book

Boston 2024 Submitted to the USOC’ *Boston Magazine* (Boston, 27 May 2015) <<http://www.bostonmagazine.com/news/blog/2015/05/27/boston-2024-bid-book/>> accessed 03 June 2015.

¹³ Judith Grant Long, ‘Tour de France: A Taxpayer Bargain Among Mega Sporting Events?’ in Wolfgang Maennig and Andrew Zimbalist (eds), *International Handbook on the Economics of Mega Sporting Events* (Edward Elgar 2012).

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5. Final Remarks

Organisational change is always difficult. This is particularly so in the case of sport organisations, which are largely conservative in their outlook.¹⁴ However, this does not mean that sport organisations do not change. The IOC, faced with a legitimacy crisis in the late 1990s, undertook significant reforms. Facing legitimacy concerns in 2014, the IOC established the Agenda 2020 reform program. The IOC has shown a desire to change, and to be increasingly open about its activities, which is commendable.

However, this does not mean that the IOC is not without its faults. This thesis has been critical of the IOC. Perhaps, it is too critical for the tastes of the IOC, but not critical enough for opponents of the Olympic Games. To that end, I find myself in the mindset defined by Bruce Kidd, an Olympic Scholar, and former Olympic athlete, as a ‘critical partisan’, or ‘critical supporter’ of the Games.¹⁵ Despite the many drawbacks of hosting the Olympic Games, the Games do bring about positive benefits, encouraging at least some people to participate in sport, or creating a ‘feel-good’ environment in a city. I have personally seen the benefits that the Olympic Games have brought to Vancouver, my home-town of sorts, unlocking provincial and federal spending on transit infrastructure, and fomenting civic pride.¹⁶ The Games were not perfect, and certainly had their controversies, but overall appeared to greatly benefit the city.

The political scientist Francis Fukuyama recently examined the political development of states. He framed the problem as one of ‘getting to Denmark’—how to develop liberal-democratic states.¹⁷ This research has similarly considered, although certainly less explicitly, the problem of avoiding future ‘Sochis’. The concern of this research is that there appear to be more ‘Sochis’ on the horizon than ‘Vancouvers’. And,

¹⁴ See Lisa M. Kikulis, ‘Research and Reviews Continuity and Change in Governance and Decision Making in National Sport Organizations: Institutional Explanations’ (2000) 14 *Journal of Sport Management* 293.

¹⁵ Bruce Kidd, ‘Critical Support for Sport’ (2013) 16 *Sport in Society* 341, 341. See also John. J. MacAloon, ‘Legacy’ as a Managerial/Magical Discourse in Contemporary Olympic Affairs’ (2008) 25 *The International Journal of the History of Sport* 2064, 2069.

¹⁶ James Keller, ‘Footprint of Vancouver Games Still Felt, but Impact Difficult to Measure’ *The Globe and Mail* (Toronto, 17 January 2014) <<http://www.theglobeandmail.com/sports/olympics/footprint-of-vancouver-olympics-still-felt-but-impact-difficult-to-measure/article16386868/>> accessed 03 June 2015.

¹⁷ Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution* (Farrar, Straus and Giroux 2011) 14.

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since not every city in the world that may host a sports mega-event has the benefit of the socio-economic and political structures of a country like Canada, the central question that this research has begun to address, and that future Olympic and sports mega-event scholars may do well to ask, is how to avoid the traps of creating more ‘Sochis’, and how they can instead ‘get to Vancouver’.

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Appendix I – Hosts of the Olympic Games

Summer Olympic Games

| Year of Games | Year Host Selected | Host City | Notes |
|---------------|--------------------|------------------------|-----------------------|
| 1896 | 1894 | Athens, Greece | |
| 1900 | 1894 | Paris, France | |
| 1904 | 1902 | St. Louis, U.S.A. | |
| 1908 | 1903 | London, U.K. | |
| 1912 | 1909 | Stockholm, Sweden | |
| 1916 | 1912 | Berlin, Germany | Cancelled Due to WWI |
| 1920 | 1919 | Antwerp, Belgium | |
| 1924 | 1921 | Paris, France | |
| 1928 | 1921 | Amsterdam, Netherlands | |
| 1932 | 1923 | Los Angeles, U.S.A. | |
| 1936 | 1931 | Berlin, Germany | |
| 1940 | 1936 | Helsinki, Finland | Cancelled Due to WWII |
| 1944 | 1939 | London, U.K. | Cancelled Due to WWII |
| 1948 | 1946 | London, U.K. | |
| 1952 | 1947 | Helsinki, Finland | |
| 1956 | 1949 | Melbourne, Australia | |
| 1960 | 1955 | Rome, Italy | |
| 1964 | 1959 | Tokyo, Japan | |
| 1968 | 1963 | Mexico City, Mexico | |
| 1972 | 1966 | Munich, West Germany | |
| 1976 | 1970 | Montréal, Canada | |
| 1980 | 1974 | Moscow, U.S.S.R. | |
| 1984 | 1978 | Los Angeles, U.S.A. | Sole bidder |
| 1988 | 1981 | Seoul, South Korea | |
| 1992 | 1986 | Barcelona, Spain | |
| 1996 | 1990 | Atlanta, U.S.A | |
| 2000 | 1993 | Sydney, Australia | |
| 2004 | 1997 | Athens, Greece | |
| 2008 | 2001 | Beijing, China | |
| 2012 | 2005 | London, U.K. | |
| 2016 | 2009 | Rio de Janeiro, Brazil | |
| 2020 | 2013 | Tokyo, Japan | |

Appendix I

Winter Olympic Games

| Year of Games | Year Host Selected | Host City | Notes |
|----------------------|---------------------------|---------------------------------|--|
| 1924 | 1921 | Charmonix, France | Originally an “International Week of Winter Sport”, as part of 1924 Summer Games |
| 1928 | 1921 | St. Moritz, Switzerland | |
| 1932 | 1923 | Lake Placid, U.S.A. | |
| 1936 | 1931 | Garmisch-Partenkirchen, Germany | |
| 1940 | 1936 | Sapporo, Japan | Cancelled Due to WWII |
| 1944 | 1939 | Cortina d’Ampezzo, Italy | Cancelled Due to WWII |
| 1948 | 1946 | St. Moritz, Switzerland | |
| 1952 | 1947 | Oslo, Norway | |
| 1956 | 1949 | Cortina d’Ampezzo, Italy | |
| 1960 | 1955 | Squaw Valley, U.S.A. | |
| 1964 | 1959 | Innsbruck, Austria | |
| 1968 | 1963 | Grenoble, France | |
| 1972 | 1966 | Sapporo, Japan | |
| 1976 | 1970 | Innsbruck, Austria | Originally to be Denver, U.S.A., moved after referendum |
| 1980 | 1974 | Lake Placid, U.S.A. | |
| 1984 | 1978 | Sarajevo, Yugoslavia | |
| 1988 | 1981 | Calgary, Canada | |
| 1992 | 1986 | Annecy, France | |
| 1994 | 1988 | Lillehammer, Norway | |
| 1998 | 1991 | Nagano, Japan | |
| 2002 | 1995 | Salt Lake City, U.S.A. | |
| 2006 | 1999 | Turin, Italy | |
| 2010 | 2003 | Vancouver, Canada | |
| 2014 | 2007 | Sochi, Russia | |

Appendix I

| Year of Games | Year Host Selected | Host City | Notes |
|---------------|--------------------|--------------------------|-------|
| 2018 | 2011 | PyeongChang, South Korea | |
| 2022 | 2015 | Beijing, China | |

Youth Olympic Games

| Year of Games | Year Host Selected | Host City | Notes |
|---------------|--------------------|-------------------------|-------------|
| 2010 | 2007 | Singapore, Singapore | |
| 2012 | 2008 | Innsbruck, Austria | |
| 2014 | 2010 | Nanjing, China | |
| 2016 | 2011 | Lillehammer, Norway | Sole bidder |
| 2018 | 2013 | Buenos Aires, Argentina | |
| 2020 | 2015 | Lausanne, Switzerland | |

Summary

1. Introduction

The 2014 Winter Olympics in Sochi, Russia, were organized successfully, but not without negative consequences. The organization of the Olympic Games was not only expensive, reportedly at a cost of €38 million, but also had a significant negative impact on individuals. For example, allegations were made that Olympic-related infrastructure was built using forced labour, families were evicted from their homes to make way for the Games and that considerable environmental damage was caused. Ideally, those who were harmed as a result of the Olympics would turn to the state for protection and compensation. This is, however, as is shown in Russia, not always possible. States are not always willing or able to solve the problems caused by organizing to tackle the Olympics, and in some cases may even be complicit in creating the problems.

This thesis examines the accountability of those involved in the Olympics for the worst outcomes of the Games. These outcomes include human rights violations, environmental damage, and other long-term damage caused by the Games. This research specifically focused on the role of the International Olympic Committee ('IOC'). The IOC owns the rights to the Olympics, selects the host of the Games, and oversees the organisation of the Games. However, the actual organisation of the Games is performed by a host city, an Organising Committee for the Olympic Games ('OCOG') and the National Olympic Committee of the host country. There are also other actors involved in the Games, such as private contractors and other government agencies. This creates a situation where there is a multitude of actors, but nobody can be held accountable if problems arise, such as those in Sochi.

2. Theories and Methods

This study examines the issue of accountability of global governance institutions. Global governance is a concept that sees the international environment regulated not by a hegemonic rule-making body, but rather by a multitude of actors that engage in governance activities. Global governance actors often set rules and standards by which other actors (states, international organizations, NGOs, individuals, etc.) are expected to observe. These

rules and standards can have a direct effect on individuals, and at times the state plays only a marginal role in this decision-making process. This situation is problematic because global governance actors often not accountable to the people whose lives they affect. While a judiciary, legislature, or other accountability mechanism limits the power of the state, this is not true of many global governance institutions.

A legal approach to the global governance problem is global administrative law ('GAL'). This theory suggests that global governance institutions are similar to national administrative institutions. A central task of administrative law is to improve the accountability of the administrative institutions by enhancing transparency and public participation in the decision-making process and the review of the decisions taken. Global administrative law takes these domestic approaches and applies them to the international level. This research also uses constructivism, a theory derived from international relations, to assess the activities of global governance institutions. Constructivism argues that actors do not behave in a predetermined manner, but that their actions are driven by their interests and identities. These interests and identities are determined by interactions with other actors and may change in the course of time. By deciding that the IOC is acting in a constructive way, the interests and the identities of the IOC should be further investigated. In this context, this thesis proposes that the IOC is an old institution, an institution founded in the late nineteenth century by aristocrats, which has not adapted to the problems of the twenty first century.

To discuss the global governance issues of the IOC and to consider the organization of the Olympic Games, three methods were used: a case study, a principal-agent approach, and a comparative legal analysis examining the World Bank and the IOC.

Firstly, this study is a case study of the Olympics. Through this case study, there is an understanding of how the IOC acts as an institution and also in how the Olympic Games can be organized in a way that avoids the worst outcome of the Games. Additionally, the analysis of an NGO that is a global governance organisation, provides insights for global governance more generally.

Second, this thesis uses a principal-agent approach to the relationship between the IOC and the actors who actually organise the Olympic Games. A principal-agent

relationship exists when one actor (the principal) delegates a task to another actor (the agent). A principal-agent approach examines situations in which an agent is engaged in ‘morally hazardous’ activities that are not favourable to, and possibly even harmful to the principal. As mentioned, the IOC the Olympics does not organise, but instead delegates the organisation of the Games to an OCOG, the National Olympic Committee, and the host city. It is often the actions of these actors, rather than the IOC, which cause the worst outcomes of the Games. This thesis examines how the IOC might call these actors to account.

Third, this study makes a comparative analysis between the IOC and the World Bank. Like the IOC today, the World Bank had problems with accountability and legitimacy – particularly in the 1980s. The World Bank is similar to the IOC because both projects where large infrastructure programs are covered. These projects can have a negative direct effect on individuals. As such, the solutions that the World Bank undertook to cope with its problems may inform steps forward for the IOC.

3. Structure of the Dissertation

Chapter 1 is the introduction of this thesis. This chapter sets out the definition of accountability, which will be used throughout the thesis: that an actor has the right to hold another actor to a set of standards to assess if it compliance with these standards and to impose consequences after-the-fact. This chapter describes the theoretical background of this research and discusses the theories of constructivism, legitimacy, global administrative law and neoliberalism (neoliberalism will not be addressed in this summary, since it represents only a small part of this thesis). Furthermore, this chapter discusses the methodology for the case study, the principal-agent approach, and comparative law, which are described above. Finally, this chapter sets forth the research questions: (1) Why should the IOC be the organisation that is accountable for the worst outcomes of the Olympic Games? Should other actors be held accountable?; (2) To what extent is the IOC accountable? Why should the IOC choose to be more accountable than it currently is?; (3) How might amending the process used to select the hosts of the Olympic Games improve accountability for the worst outcomes of the Games?; and, (4) Are other accountability mechanisms within the broader world of international sport sufficient to improve the IOC

accountability? If not, are alternative accountability mechanisms available to improve the IOC's accountability?

Chapter 2 discusses the theoretical concepts of global governance and GAL. As described above, global governance institutions set out rules and standards that govern the behaviour of other actors. To be effective, global governance institutions must generally be seen as legitimate by those whom they wish to govern. If these institutions are not considered as legitimate the actors that are being regulated may not follow the rules, or may decide to leave the regime altogether. Legitimacy is achieved by means of a continuous series of actions between the institution and the regulated actors. To examine the legitimacy of the IOC, I propose a framework governing the legitimacy of global governance actors. This framework includes three types of legitimacy: structural legitimacy, substantive legitimacy, and procedural legitimacy. These three types of legitimacy are studied in chapters Three, Four, and Five.

Chapter 3 examines the structural legitimacy of the IOC and the Olympic Games. In doing so, I examine four aspects: (1) the source of the authority of the institution, (2) whether the institution has subject-matter expertise, (3) the representativeness of the institution, and (4) the extent to which the institution is independent. This thesis concludes that the IOC does not have a democratic basis for legitimacy. The IOC is a private actor, formed by a private agreement. The members of the IOC are appointed by the IOC itself, and they do not represent the broader public. The IOC has a high level of subject-matter expertise in regards to the regulation of sport in collaboration with other members of the Olympic Movement, which includes the National Olympic Committees of each country and the International Federations that organise much of international sport. Finally, the IOC is an independent actor, an NGO is while is not *de jure* immune, but often enjoys *de facto* immunity from domestic jurisdictions. While independence is, in principle, a positive feature of an international actor, one might conclude by examining the IOC that it is possible to be too independent, when an actor becomes unaccountable. Based on these findings, the thesis concludes that the IOC has a low level of structural legitimacy. The lack of structural legitimacy causes a problem when the Games are held. The organisation of the Olympic Games requires a high degree of cooperation between the IOC and the state

authorities, creating a situation where IOC exercises public power without being held accountable. The state is thus 'co-opted' through various actions, such as passing legislation and providing financial guarantees to support the Games that reduce the risks to the IOC and pass the financial and organisational risks along to the local populations. This situation of co-optation also creates a 'problem of many hands' where many different actors are involved, and accountability is hard to establish.

Chapter 4 examines the substantive legitimacy of the IOC and the Olympic Games. Substantive legitimacy requires that an institution meets minimum moral responsibility (i.e., does not violate fundamental human rights), and that it maintains institutional integrity (i.e., fulfills its mandate). Although the IOC has no obligation under international law to prevent human rights violations and environmental damage, this thesis turns to the International Law Commission's *Draft Articles on the Responsibility of International Organizations* and the United Nations' *Guiding Principles of Business and Human Rights* to argue that the IOC should have a minimum moral responsibility to ensure that fundamental human rights are not violated and that the environment is protected. This thesis examines some recent editions of the Olympic Games, and finds violations of human rights such as the use of forced labour on Games-related infrastructure, the displacement of persons to make way for the venues, and environmental damage. Other issues, such as restrictions on freedom of expression and/or mistreatment of indigenous populations have also occurred in the organisation of the Games, but are not discussed in detail in this thesis. This poor human rights record demonstrates that the Olympics do not meet a standard of minimum moral responsibility. Regarding the institutional integrity, this research observes that the IOC and those seeking to host the Games promise an improved economy, jobs, and urban rejuvenation. The reality is that the Games' legacies are often disappointing at best, and at worst leave the host city worse off than before. This thesis concludes that the way in which the Games are being organised is unsustainable and does not fulfill the mandate of the IOC. In addition, substantial legitimacy problems are exacerbated when the Games are held in countries with a poor record of accountability and other elements of the rule of law. These countries are most at risk that they will not be able to cope with the negative effects

of the Olympics and that they cannot fulfill their responsibility to those who are negatively affected by the worst of the Games outcomes.

Chapter 5 examines the procedural legitimacy of the process of the IOC to select the host city of the Olympic Games. Procedural legitimacy requires that the decision-making is rational, consistent and impartial, which the IOC's host selection process largely fulfills. It also requires that the institution is accountable for its decision-making process. Decisions should be taken in a manner that is transparent, provides avenues for public participation, and allows for a review of the decisions taken (judicial or otherwise). The host selection process is highly transparent. However, it lacks a mechanism to ensure public participation at either the level of the IOC or at the city that is bidding to host the Games. Because the bid by a city to host the Olympic Games is often led by political and business elites, there is a significant chance that public participation is minimised in the bidding and the organising phases. Nevertheless, it remains questionable whether the host selection process requires some sort of review mechanism. The concern is not about reviewing the choice of who should host the Games (absent allegations of corruption or unfair practices), but rather when the organisation of the Games leads to the worst outcomes of the Games. How the actual organisation of the Games may be subject to review is examined in Chapters Six and Seven.

Chapter 6 uses a principal-agent approach to explore the relationship between the IOC and those who organize the Games. In this case, the 'principal' is the IOC, and its 'agents' include the National Olympic Committee of the host country, the OCOG, and the host city itself. The agents actually organise the Games, which also includes procuring their own agents. The agents are often involved in the oversight of or active participation in some of the worst outcomes of the Olympic Games, in a far more direct manner than the IOC. The IOC provides some guidelines in the host selection process, and the host city contract to ensure that the agents meet certain standards. With respect to the occurrence of the worst results of the games, the IOC requires, for example, an environmental impact analysis. The IOC has added more standards following the 'Agenda 2020' reforms, published in 2014. Many of these requirements, however, are broad standards that may not require specific actions by the agents. This makes for a weak mandate to protect against the

worst outcomes of the Games. The IOC also possesses weak enforcement mechanisms. Although the IOC may take the Games away from the host city in certain situations, the chances of this happening are small, as the costs are high for the IOC. This thesis therefore concludes that the IOC needs to improve its human rights and environmental protection mandates, but also the mechanisms by which they are enforced.

Chapter 7 examines the accountability of the IOC as a global governance institution. In particular, it considers the situation where the worst outcomes of the Games occur, but the IOC has taken no action to prevent or remedy these outcomes. In other words, how may the accountability of the IOC be improved? A comparative analysis is undertaken, examining the IOC and the World Bank. The World Bank was faced with an accountability crisis in the late 1980s, when many of its development projects resulted in, for example, the forced displacement of people and damage to the environment. The World Bank introduced a series of reforms, including the establishment of the World Bank Inspection Panel. This chapter examines the current accountability mechanisms for the IOC, namely the IOC Ethics Commission and the Court of Arbitration for Sport. This section then analyzes the World Bank Inspection Panel, and examines whether a similar organisation could function with the context of the Olympic Movement and the Olympic Games. This thesis concludes that such a organisation could be established, but that it must remain independent from the IOC.

Chapter 8 concludes the thesis and discusses the overall findings. This chapter sets out the implications of this thesis for international legal theory and discusses practical considerations for IOC reform. This chapter also discusses the limitations of this thesis and the possibilities for further research. This is further discussed below.

4. Findings

This thesis has revealed a lack of legitimacy on the part of the IOC. The IOC lacks structural legitimacy, as a private organization that recruits its own members and does not represent the general population. The IOC also lacks substantive legitimacy by overseeing the Olympic Games, which involve human rights abuses, environmental damage, and other harms. The IOC lacks procedural legitimacy because public participation is often lacking, both in the selection of a host and in the preparations of the Games themselves. To remedy

the lack of legitimacy, the IOC needs to improve its accountability to those affected by the Games. First, transparency and accountability of decision-making needs to be improved, discussed in Chapter Five. Second, the mandate for Games organisers to avoid the worst outcomes of the Games could be strengthened by incorporating specific standards, discussed in Chapter Six. Third, an accountability mechanism that hears complaints from affected individuals, similar to the World Bank Inspection Panel, could be established, discussed in Chapter Seven. Improving the accountability of the IOC is not impossible, as the IOC has made efforts to improve accountability in the past, as evidenced by the IOC reforms following the ‘Salt Lake City Scandal’ of the late 1990s.

This dissertation also has findings that are of importance for the development of international legal theory. The focus of GAL on improving accountability through procedure is insufficient. In addition, it is difficult to transplant procedural elements of accountability from the national level to the international level. Domestic agencies have substantive rights guaranteed in the constitution or legislation that they must account for, which is not always the case for global administrative actors. While a document such as the World Bank’s Operational Policies and Procedures has set out some substantive rights for those affected by World Bank-funded projects, the IOC has been slow to adopt similar policies. This does not mean that procedure is unimportant, but that it is more effective when it is operating in a situation where substantive rights also exist.

In addition, this thesis has demonstrated the value of examining non-sports organisations to improve sport institutions. Sport is often seen as unique, and the sports world has worked hard to achieve this ‘special status’ recognised by, for example, the European Union and the United Nations. However, the insistence that sport is unique has prevented the IOC and other sport organisations from truly learning from the best practices undertaken by other actors. This thesis shows that comparisons with other international actors, such as the World Bank, can provide useful examples for the IOC to follow.

Finally, this thesis has some shortcomings that need to be addressed in future research. For instance, more research is needed into the actual organisation of the Games. Practical research into how bid committees interact with local communities during the bid

process would reveal a lot about the dynamics of transparency and public participation in this process. There should also be research on the structure and staffing of OCOGs.

In summary, this study shows the value of researching sport institutions from a global governance and legal framework. Examining sport, with its unique institutional framework, allows for a critical assessment of global governance theories. In addition, creative solutions can be found when comparing non-sport global governance institutions with sport institutions.

Nederlandse samenvatting

1. Introductie

De Olympische Winterspelen 2014 in Sotsji, Rusland, werden met succes georganiseerd, maar niet zonder negatieve gevolgen. De organisatie van de Olympische Spelen was niet alleen duur, naar verluidt €38 miljoen, maar had daarnaast ook een aanzienlijk negatief effect op individuen. Het is zeer waarschijnlijk dat de Olympisch-gerelateerde infrastructuur werd gebouwd door middel van dwangarbeid, dat families uit hun huizen werden verdreven om plaats te maken voor de Spelen en dat aanzienlijke milieuschade werd veroorzaakt. Idealiter zouden diegenen die schade hebben opgelopen als gevolg van de Olympische Spelen zich tot de Staat kunnen wenden voor bescherming en schadeloosstelling. Dit is echter, zoals ook blijkt in Rusland, niet altijd mogelijk. Staten blijken niet altijd bereid of in staat te zijn om de problemen veroorzaakt door het organiseren van de Olympische Spelen aan te pakken, en zijn in sommige gevallen zelfs medeplichtig aan het creëren van de problemen.

Dit proefschrift onderzoekt de verantwoordingsplicht van de betrokkenen bij de Olympische Spelen voor de ergste negatieve gevolgen van de Spelen. Deze gevolgen omvatten onder andere schendingen van de mensenrechten, milieuschade en lange termijn schade veroorzaakt door de Spelen. In het onderzoek wordt in het bijzonder aandacht besteed aan het Internationaal Olympisch Comité (IOC). Het IOC bezit de rechten van de Olympische Spelen, selecteert de gastheer van de Spelen, en houdt globaal toezicht op de organisatie ervan. De daadwerkelijke organisatie van de Spelen wordt echter verricht door een gaststad, een Organiserend Comité voor de Olympische Spelen (OCOS) en het Nationaal Olympisch Comité van het gastland. Daarnaast zijn er ook andere actoren betrokken bij de Spelen, zoals private aannemers en andere overheidsinstanties. Dit creëert een situatie waarbij er een veelheid aan actoren betrokken zijn, maar niemand verantwoordelijk gehouden kan worden als er problemen ontstaan, zoals die in Sotsji.

2. Theorieën en methodes

Dit onderzoek bestudeert het probleem van de verantwoordingsplicht van *global governance* instellingen (mondiale bestuursinstellingen). Global governance beschouwt dat

internationaal recht en internationale betrekkingen niet gereguleerd worden door één wereld-overheid, maar in plaats daarvan door een veelheid aan actoren welke activiteiten ontplooiën die als governance gekwalificeerd worden. Deze *global governance* actoren stellen vaak regels en standaarden op die door andere actoren (Staten, internationale organisaties, NGOs, individuen, etc.) nageleefd moeten worden. Deze regels en normen kunnen een direct effect hebben op individuen, de staat speelt enkel een marginale rol in dit besluitvormingsproces. Deze situatie is problematisch omdat *global governance* actoren vaak niet aansprakelijk zijn tegenover de personen wiens leven ze beïnvloeden. De macht van de staat wordt ingeperkt door de rechtsprekende macht, de wetgevende macht of via andere verantwoordingsmechanismen, echter dit geldt dit niet voor de vele *global governance* instellingen.

Een juridische benadering van het *global governance* probleem is *global administrative law* (mondiaal bestuursrecht). Deze theorie suggereert dat *global governance* instellingen vergelijkbaar zijn met nationale administratieve instellingen. Een centrale taak van het bestuursrecht is het verbeteren van de verantwoordingsplicht van de bestuurlijke instellingen door het realiseren van (meer) transparantie en publieksparticipatie in de besluitvormingsprocedure en de toetsing van de genomen beslissingen. *Global administrative law* neemt deze nationale benaderingen over en past deze toe op het internationaal niveau. Dit onderzoek gebruikt *Constructivism*, een theorie afkomstig uit internationale betrekkingen, voor het beoordelen van de activiteiten van *global governance* instellingen. *Constructivism* stelt dat actoren zich niet gedragen op een vooraf bepaalde manier, maar dat hun acties worden gedreven door hun interesse en identiteiten. Deze interesses en identiteiten worden bepaald door interactie met andere actoren en kunnen veranderen in de loop van de tijd. Door te stellen dat het IOC handelt op een *constructivistische* manier, dienen de interesse en de identiteiten van het IOC nader onderzocht te worden. In dit kader stelt dit proefschrift dat het IOC een ouderwetse instelling is, een instelling opgericht in de late negentiende-eeuw door aristocraten, die zich niet heeft aangepast aan de problemen van de eenentwintigste eeuw.

Om de besproken *global governance* problemen van het IOC en de organisatie van de Olympische spelen te onderzoeken, zijn er drie methodes gebruikt: er is een case-study

gedaan, de *principal-agent* theorie is toegepast op het IOC & Olympische Spelen en er is juridisch vergelijkend onderzoek gedaan tussen de Wereldbank en het IOC.

Ten eerste maakt dit onderzoek gebruik van een case-study van de Olympische Spelen. Via deze case study is er inzicht verkregen in hoe het IOC acteert als een instelling en daarnaast in hoe de Olympische Spelen kunnen worden georganiseerd op een manier waarop de slechtste uitkomsten van de Spelen niet ontstaan. Daarnaast zorgt de analyse, van een NGO die een *global governance* organisatie vormt, ervoor dat er inzichten opgedaan worden die van belang zijn voor *global governance* in het algemeen.

Ten tweede maakt dit proefschrift gebruik van de *principal-agent* theorie om de relatie tussen het IOC en de actoren die daadwerkelijk de Olympische Spelen organiseren beter te begrijpen. Een *principal-agent* relatie bestaat wanneer een actor (de principaal) een taak delegeert naar een andere actor (de agent). Een *principal-agent* aanpak onderzoekt situaties waarin een agent zich bezighoudt met 'moreel gevaarlijke' activiteiten die niet gunstig, en mogelijk zelfs schadelijk zijn voor de opdrachtgever [principaal], zoals het niet uitvoeren van de taak of het uitvoeren van de taak op een corrupte manier. Zoals gezegd, organiseert het IOC de Olympische Spelen niet alleen, maar delegeert de organisatie aan een OCOS, het National Olympisch Committee en de gaststad. Het zijn vaak de acties van deze actoren, in plaats van het IOC, die de meest negatieve gevolgen van de Spelen teweegbrengen. Dit proefschrift onderzoekt daarom hoe het IOC deze actoren ter verantwoording zou kunnen roepen.

Ten derde maakt dit onderzoek een rechtsvergelijkende analyse tussen het IOC en de Wereldbank. Net als het IOC nu, had de Wereldbank vooral in de jaren '80 grote problemen met zijn verantwoordingsplicht en legitimiteit. De Wereldbank is vergelijkbaar met het IOC omdat beiden projecten overzien waar grote infrastructuurprogramma's onder kunnen vallen. Deze projecten kunnen een negatief direct effect hebben op individuen. Als zodanig zijn beide instellingen vergelijkbaar wat betreft de resultaten van de programma's, en de problemen die zij geprobeerd hebben het hoofd te bieden.

3. Structuur van het proefschrift

Hoofdstuk 1 vormt de introductie van dit proefschrift. Dit hoofdstuk zet de definitie van de verantwoordingsplicht uiteen, die zal worden gebruikt in de gehele thesis: een actor heeft

het recht een andere actor aan een set standaarden te houden, te beoordelen wanneer aan deze standaarden is voldaan en de naleving te realiseren via handhaven wanneer dit niet het geval is. Dit hoofdstuk beschrijft de theoretische achtergrond van dit onderzoek en bediscussieert de theorieën ten aanzien van *constructivism*, legitimiteit, *global administrative law* en neoliberalisme (neoliberalisme zal niet behandeld worden in deze samenvatting, aangezien het slechts een klein deel vormt van dit proefschrift). Verder behandelt dit hoofdstuk de methodologie voor de casestudy, *principal-agent* theorie en vergelijkend rechtsonderzoek, welke hierboven zijn beschreven. Ten slotte zet dit hoofdstuk de onderzoeksvragen uiteen: (1) Waarom zou het IOC de organisatie moeten zijn die verantwoordelijk wordt gehouden voor de meest negatieve uitkomsten van de Olympische Spelen? Zouden andere actoren verantwoordelijk moeten worden gehouden? (2) In hoeverre is het IOC verantwoordelijk? Waarom zou het IOC kiezen om meer verantwoordelijk te worden dan het op dit moment is? (3) Hoe zou het selectieproces voor een Olympische gaststad kunnen worden aangepast om de verantwoordingsplicht voor de meest negatieve uitkomsten van de Spelen te verbeteren? (4) Zijn andere verantwoordingsmechanismes binnen de internationale sportwereld voldoende om de verantwoordingsplicht van het IOC op een toereikende wijze te verbeteren? Zo niet, zijn er alternatieve verantwoordingsmechanismes beschikbaar om de verantwoordingsplicht van het IOC te verbeteren?

Hoofdstuk 2 bespreekt de theoretische concepten van *global governance* en *global administrative law* (het mondiale bestuursrecht). Zoals hierboven beschreven schrijven *global governance* instellingen regels en standaarden voor die het gedrag van andere actoren reguleren. Om effectief te kunnen besturen moeten *global governance* instellingen worden gezien als legitiem door hen die zij willen besturen. Als deze instellingen niet als legitiem worden beschouwd door de actoren die ze proberen te besturen kan dit als gevolg hebben dat deze actoren zich niet aan de gestelde regels houden, of dat zij besluiten om de instelling af te wijzen of te verlaten. Legitimiteit wordt bereikt door middel van een voortdurende reeks van acties tussen de instelling en degenen die worden bestuurd. Om de legitimiteit van het IOC te onderzoeken, stel ik een raamwerk vast voor de legitimiteit van *global governance* actoren; dit raamwerk omvat drie soorten legitimiteit: structurele

legitimiteit, inhoudelijke legitimiteit en procedurele legitimiteit. Deze drie legitimiteitsvarianten worden bestudeerd in hoofdstuk 3, 4 en 5.

Hoofdstuk 3 onderzoekt de structurele legitimiteit van het IOC en de Olympische Spelen. Bij de beoordeling van de structurele legitimiteit van het IOC en de Olympische Spelen kijk ik naar vier dingen: (1) de bron van het gezag van de instelling, (2) of de instelling beschikt over '*subject-matter expertise*', (3) de representativiteit van de instelling en (4) in welke mate de instelling onafhankelijk is. Dit proefschrift concludeert dat het IOC geen democratische basis voor legitimiteit bezit. Het IOC is namelijk een private actor, opgericht door middel van een private overeenkomst. Daarnaast worden de leden van het IOC benoemd door het IOC zelf, en representeren zij niet het bredere publiek. Het IOC heeft wel belangrijke '*subject-matter expertise*' met betrekking tot het reguleren van sport in samenwerking met andere leden van de Olympische beweging, zoals onder andere de Nationale Olympische comités van elk land en de Internationale Federaties die veel van de internationale sport organiseren, waaronder het organiseren van evenementen kwalificaties van atleten en in sommige gevallen zelfs de professionele leagues. Ten slotte is het IOC een zeer onafhankelijke actor, vooral gezien het feit dat het een NGO is die *de jure* niet immuun is, maar *de facto* vaak immuniteit van nationale jurisdictie geniet. Onafhankelijkheid is in principe een positieve eigenschap van een internationale actor, maar met betrekking tot de IOC zou men kunnen concluderen dat het mogelijk té onafhankelijk is, wat leidt tot aantijgingen dat het aan niemand verantwoording hoeft af te leggen. Op basis van deze bevindingen concludeert dit proefschrift dat het IOC een laag niveau van structurele legitimiteit heeft. Het gebrek aan structurele legitimiteit veroorzaakt een probleem wanneer de Spelen worden georganiseerd. De organisatie van de Olympische Spelen vereist een hoge mate van samenwerking tussen de IOC en de nationale autoriteiten, in deze situatie oefent het IOC publieke bevoegdheid uit zonder hiervoor verantwoordelijk te zijn. De Staat is derhalve '*co-opted*' [betrokken] in verschillende acties, zoals in het passeren van wetgeving, het verstrekken van financiële garanties om de Spelen te ondersteunen en bij het verminderen van de risico's die door het IOC worden gedragen en het afschuiven van financiële en organisatorische risico's op de lokale bevolking. Deze situatie van '*co-optation*' creëert tevens het 'probleem van vele handen' waarbij veel

verschillende actoren betrokken zijn bij de Olympische Spelen, en de uiteindelijke verantwoordelijkheid moeilijk te traceren is.

Hoofdstuk 4 onderzoekt de inhoudelijke legitimiteit van het IOC en de Olympische Spelen. Inhoudelijke legitimiteit vereist dat een instelling voldoet aan een minimale morele verantwoordelijkheid (d.w.z., dat geen fundamentele mensenrechten worden geschonden), en dat zij beschikt over institutionele integriteit (d.w.z., dat aan haar mandaat voldaan wordt). Hoewel het IOC geen verplichting onder internationaal recht heeft om mensenrechtenschendingen en milieuschade te voorkomen, wendt dit proefschrift zich tot de International Law Commissions *Draft Articles on the Responsibility of International Organizations* en de *United Nations' Guiding Principles on Business and Human Rights* om te beargumenteren dat het IOC in ieder geval een minimale morele verantwoordelijkheid heeft om te verzekeren dat fundamentele mensenrechten niet worden geschonden en dat het milieu wordt beschermd. In het proefschrift zijn een aantal recente edities van de Olympische Spelen onderzocht waaruit geconcludeerd kan worden dat er vele gevallen waren van schendingen van rechten van hen die aan de infrastructuur voor de Spelen werken, van personen die hun huizen uit werden gezet om zo plaats te maken voor Olympische locaties en ondersteunende infrastructuur (vervoer, hotels, etc.) en van schade aan het milieu. Ook andere problemen, zoals beperkingen van de vrijheid van meningsuiting en/of slechte behandeling van de inheemse bevolking kwamen voor tijdens de organisatie van de Olympische Spelen, maar zijn niet in detail besproken in dit proefschrift. Deze slechte mensenrechtensituatie vormt het bewijs dat de Olympische Spelen niet voldoen aan de standaard van minimaal morele verantwoordelijkheid. Ten aanzien van de institutionele integriteit merkt het onderzoek op dat het IOC en degenen die proberen om de Olympische Spelen naar de gaststad te brengen onder andere een verbeterde economie, met meer werkgelegenheid, of stedelijke verjonging beloven. De realiteit is dat in het beste geval de erfenis van de Spelen tegenvalt, en in het ergste geval de gaststad er na de Spelen slechter aan toe is dan daarvoor. Dit proefschrift concludeert dat de manier waarop de Spelen momenteel worden georganiseerd onhoudbaar is en het mandaat van het IOC niet vervult. Daarnaast worden inhoudelijke legitimiteitsproblemen verergerd wanneer de Spelen worden gehouden in landen met een slechte reputatie als rechtsstaat.

Deze landen lopen het meeste risico dat ze niet in staat zullen zijn om te kunnen omgaan met de negatieve gevolgen van de Olympische Spelen en dat zij niet kunnen voldoen aan hun verantwoordingsplicht naar hen die negatief geraakt zijn door de slechtste uitkomsten van de Spelen.

Hoofdstuk 5 onderzoekt de procedurele legitimiteit van het proces van het IOC om de gaststad van de Olympische Spelen te selecteren. Procedurele legitimiteit vereist dat de besluitvorming rationeel, consistent en onpartijdig is, waar het IOC selectieproces grotendeels aan voldoet. Het vereist ook dat de instelling die de beslissing neemt, aansprakelijk is. Dit houdt in dat dat beslissingen op transparante wijze genomen moeten worden, dat in de besluitvormingsprocedure er mechanismen zijn voor publieksparticipatie en dat er een procedure is voor de toetsing van de genomen beslissingen (juridisch of anderszins). Het proces dat het IOC gebruikt om de gastheer van de Olympische Spelen te selecteren is in hoge mate transparant. Het ontbreekt echter aan een mechanisme om de participatie van het publiek in het selectieproces te garanderen, zowel bij het IOC als bij de stad die een bid uitbrengt om de Spelen te mogen organiseren. Omdat de beslissing om zich als stad kandidaat te stellen om de Olympische Spelen (kandidatuur) te organiseren vaak wordt aangevoerd door politieke en zakelijke elites, concludeert dit proefschrift dat er een aanzienlijke kans bestaat dat de Olympische Spelen worden georganiseerd met minimale publieksparticipatie, zowel in de conceptualisatiefase als in de uitvoeringsfase. Desondanks behoeft de selectieprocedure geen beoordelingsmechanisme. De bezorgdheid is namelijk niet om het beoordelen van de beslissing wie de Spelen mag organiseren (aantijgingen van corruptie en oneerlijke selectieprocedures nagelaten), maar om de organisatie van de Spelen die de ergste uitkomsten van de Spelen hebben veroorzaakt. Hoe de daadwerkelijke organisatie van de Spelen aan een beoordelingsmechanisme kan worden onderworpen wordt behandeld in hoofdstuk 6 en 7.

Hoofdstuk 6 onderzoekt met behulp van de *principal-agent* aanpak de relatie tussen het IOC en degenen die de Spelen organiseren. In dit geval is de 'principaal' het IOC, en de 'agenten' het Nationaal Olympisch Comité van het gastland, het Organisatiecomité voor de Olympische Spelen en de gaststad zelf. Deze drie organisaties organiseren daadwerkelijk de Spelen, wat ook het inhuren van eigen agenten behelst. Deze organisaties

houden ofwel toezicht op, of nemen deel aan, sommige van de ergste uitkomsten van de Olympische Spelen, op een meer directe wijze dan het IOC doet. Het IOC verstrekt enkele richtlijnen in de selectieprocedure voor het gastland en in het gaststad-contract om er zeker van te zijn dat de agenten die de Spelen daadwerkelijk organiseren voldoen aan bepaalde standaarden. Met betrekking tot het voorkomen van de ergste uitkomsten van de Spelen verlangt de IOC bijvoorbeeld een milieueffectanalyse. Het IOC heeft meer vereisten ingevoerd naar aanleiding van het hervormingsprogramma 'Agenda 2020' uit 2014. Veel van deze vereisten zijn echter brede standaarden die geen specifieke actie van het gastland of de gaststad vereisen. Dit zorgt voor een zwak mandaat voor de organisatoren om te beschermen tegen de ergste uitkomsten van de Spelen. Het IOC heeft daarnaast een zwak handhavingsmechanisme. Alhoewel het IOC de Spelen kan weghalen bij de gaststad in bepaalde situaties, is de kans dat dit zal gebeuren klein aangezien de kosten hiervoor te hoog zullen zijn voor het IOC. Dit onderzoek concludeert daarom dat het IOC het mensenrechten- en milieubeschermingsmandaat wat zij geeft aan haar agenten moet versterken. Daarnaast moet het IOC de mechanismen die ze kan gebruiken om ervoor te zorgen dat de agenten de Spelen naar tevredenheid uitvoeren, heroverwegen in het kader van de geschetste problemen.

Hoofdstuk 7 bestudeert de verantwoordingsplicht van het IOC als *global governance* instelling. In het bijzonder wordt er onderzocht wat er gebeurt als de ergste uitkomsten van de Spelen zich realiseren en het IOC geen actie onderneemt (of heeft ondernomen) om deze uitkomsten te voorkomen of verhelpen. In dit kader wordt er een vergelijkende analyse uitgevoerd tussen het IOC en de Wereldbank. De Wereldbank werd geconfronteerd met een verantwoordingscrisis eind jaren tachtig, toen veel van haar ontwikkelingsprojecten resulteerde in, bijvoorbeeld, de gedwongen verplaatsing van personen of schade aan het milieu. De Wereldbank voerde hierna een reeks hervormingen door, zoals het oprichten van het Wereldbank Inspectie Panel. Dit hoofdstuk onderzoekt de huidige verantwoordingsmechanismen voor het IOC, te weten de Ethische Commissie van het IOC en het Hof van Arbitrage voor de Sport. Dit hoofdstuk analyseert vervolgens het Wereldbank Inspectie Panel, en onderzoekt of er een soortgelijke organisatie zou kunnen functioneren in de context van de Olympische Beweging en de Olympische Spelen. Dit

proefschrift constateert dat een dergelijk panel zou kunnen werken en dat het de onafhankelijkheid van het IOC zou beschermen. Een dergelijk panel zou echter onafhankelijk moeten zijn van het IOC en andere leden van de Olympische beweging, aangezien een gebrek aan onafhankelijkheid een probleem is gebleken bij instituties als het Hof van Arbitrage voor Sport.

Hoofdstuk 8 concludeert het proefschrift en beschrijft de algemene bevindingen. Dit hoofdstuk zet vooral de implicaties van dit proefschrift uiteen voor internationaal juridische theorie en behandelt praktische overwegingen voor hervormingen. Verder bespreekt dit hoofdstuk de beperkingen van dit proefschrift en de mogelijkheden voor verder onderzoek. Dit wordt hieronder verder behandeld.

4. Bevindingen

Uit dit proefschrift blijkt dat het IOC een aanzienlijk gebrek aan legitimiteit heeft. Het IOC ontbreekt aan structurele legitimiteit, aangezien het een private organisatie is die zijn eigen leden werft en niet de algemene bevolking representeert. Het IOC ontbeert tevens inhoudelijke legitimiteit doordat het organiseren van de Spelen vaak gepaard gaat met mensenrechtenschendingen, milieuschade en ander leed. Het IOC ontbeert procedurele legitimiteit doordat de publieksparticipatie vaak gebrekkig is, zowel in het selectieproces van een gastheer als in de voorbereidingen van de Spelen zelf. Om het legitimiteitsgebrek te verhelpen dient het IOC haar verantwoordingsplicht naar hen die getroffen worden door de Spelen te verbeteren. Dit kan op verschillende manieren bereikt worden. Ten eerste zouden de transparantie en de verantwoordingsplicht verbeterd kunnen worden, zoals beargumenteerd in hoofdstuk 5. Ten tweede zou het mensenrechtenmandaat van de organisatoren van de Spelen versterkt kunnen worden door specifieke standaarden op te nemen, zoals besproken in hoofdstuk 6. Ten derde, zou een beoordelingsmechanisme wat klachten van getroffen individuen behandelt, vergelijkbaar met het Wereldbank Inspectie Panel, in het leven geroepen kunnen worden, zoals besproken in hoofdstuk 7. Het verbeteren van de verantwoordingsplicht van het IOC is niet onmogelijk, aangezien het IOC al eerder pogingen heeft gedaan om haar verantwoording te verbeteren na incidenten zoals de corruptie bij het selecteren van de gastheer van de Olympische Spelen tijdens het ‘Salt Lake City Schandaal’, in de late jaren negentig.

Dit proefschrift heeft tevens bevindingen die van belang zijn voor de ontwikkeling van internationaal juridische theorie. De stelling dat de focus van *global administrative law* op het verbeteren van procedurele verantwoording *an sich* niet voldoende is, wordt in het bijzonder ondersteund. Het is lastig om procedurele verantwoordingselementen van het nationale niveau te transplanteren naar het internationale niveau. Nationale overheidsorganen hebben inhoudelijke rechten die worden gewaarborgd in een grondwet of in wetgeving, wat niet altijd het geval is voor mondiale bestuursorganen. Waar de Wereldbank *Operational Policies and Procedures* heeft, welke inhoudelijke rechten uiteenzetten voor de getroffen van Wereldbank projecten, is de IOC traag met het aannemen van vergelijkbaar beleid. Dit betekent niet dat focussen op procedures onbelangrijk is, maar eerder dat het effectiever is wanneer dit plaatsvindt in een situatie waar er ook inhoudelijke rechten bestaan.

Daarnaast heeft dit proefschrift de waarde gedemonstreerd van het onderzoeken van non-sport organisaties om sportinstituten te verbeteren. Sport wordt vaak gezien als uniek door de sportorganisaties, en de sportwereld heeft hard gewerkt om deze ‘speciale status’ te verkrijgen, wat bijvoorbeeld erkend is door de Europese Unie en de Verenigde Naties. Het aandringen op een speciale status voor sport heeft echter ook verhinderd dat het IOC, en andere sportorganisaties, de ‘*best practices*’ van andere organisaties hebben overgenomen. Dit proefschrift toont aan dat vergelijkingen met andere organisaties, zoals de Wereldbank, nuttige voorbeelden kan opleveren die het IOC kan volgen.

Ten slotte heeft dit proefschrift een aantal tekortkomingen die in toekomstig onderzoek verder moeten worden geadresseerd. Er is meer onderzoek nodig naar de daadwerkelijke organisatie van de Spelen. Praktisch onderzoek naar hoe bid comités bij het maken van een bid voor de Olympische Spelen omgaan met de lokale gemeenschappen zou veel onthullen over de dynamiek van (of het gebrek aan) transparantie en publieksparticipatie in dit proces. Tevens dient er, zodra er besloten is dat de Spelen georganiseerd gaan worden, onderzoek gedaan te worden naar de structuren en de personeelsbezetting van het Organisatiecomité voor de Olympische Spelen. Zulk onderzoek zorgt ervoor dat concretere suggesties gedaan kunnen worden om de verantwoordingsplicht van degenen die de Spelen organiseren te verbeteren.

Kortom, dit onderzoek toont de waarde aan van het onderzoeken van sportinstellingen vanuit een *global governance* en juridisch kader. Het onderzoeken van sport instellingen zorgt, gezien hun unieke positie, voor een meer kritische evaluatie van *global governance* theorieën. Bovendien kunnen creatievere oplossingen gevonden worden door andere *global governance* instellingen te vergelijken met sportinstellingen, welke dan toegepast kunnen worden op sport.

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About the Author

Ryan Stephan Gauthier was born on 16 August 1983 in Pembroke, Canada, spending his youth in Bentley, Alberta, and Comox, British Columbia. He studied political science (international relations) at Carleton University, Ottawa, Canada, receiving his B.A. (Hons.) in 2005. During this time he worked as an intern at Industry Canada's Broadband for Rural and Northern Development project, and at the Department of Foreign Affairs and International Trade's European trade and investment division. He also spent a year abroad in the East Asian Studies Program at Kansai Gaidai University (関西外国語大学), Hirakata City, Japan. He received his J.D. from Harvard Law School in 2010, and became a member of the New York Bar the next year. During his time at Harvard, he worked as an intern with the Toronto Maple Leafs hockey team, and the United Nations Inter-Agency Project on Human Trafficking, in Bangkok, Thailand. He also served as an editor of the Harvard Environmental Law Review, and was a co-founder of the Harvard Journal of Sports and Entertainment Law. After law school, Ryan worked as an associate with the law firm Heenan Blaikie, in Vancouver, Canada. While a PhD student at Erasmus University Rotterdam, Ryan taught courses in international and European sports law, and served as a board member of the law PhD students' association (Juridische Aio-vereniging Rotterdam). He also held a visiting scholar appointment at Allard School of Law (2013-14) and a visiting researcher position at Harvard Law School (2014-15). Since the end of his appointment at Erasmus University, Ryan has been working as a consultant, as a lecturer in sports law, and spending his free time playing the tuba.