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RESOLUTION OF HUMAN RIGHTS DISPUTES ARISING FROM MEGASPORT EVENTS: WHY CLAIMS AGAINST SPORT GOVERNING BODIES ARE NEXT TO IMPOSSIBLE

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ABSTRACT

Sport governing bodies (SGBs) such as FIFA and the International Olympic Committee absolve themselves of any liability under contract or tort from claims arising in connection with megasport events. They are able to do this by delegating all liability from potential claims to the MSE's host state and its local organizing committee. As a result of these host state agreements, the host state will adopt enabling legislation and the SGB in question will be immune not only as a matter of contract, but also as a matter of law. This state of affairs is not satisfactory, chiefly because the SGB, as the superior negotiating party in host state agreements, has the power to impose stricter and more efficient procedures for access to justice as a form of responsibility incumbent on host states. Such responsibility may well include a rigid obligation to expeditiously and impartially subject relevant claims to standing or ad hoc judicial and arbitral bodies. In turn, these bodies must dispense justice in a manner that is consistent with fundamental human rights. This is something that SGBs have consciously failed to demand in host state agreements, thereby leaving claims by aggrieved parties unresolved or subjected to mechanisms that fail to deliver true justice. Therefore, it is imperative that the next generation of host state agreements engage with the needs of disadvantaged stakeholders and demand that host states adapt to higher standards of fair trial rights.

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INTRODUCTION

While the right of access to justice is a fundamental tool of liberal societies, its application in the context of megasport events (MSEs) is not straightforward. For instance, the commercial and intellectual property assets of MSEs are exclusively in the hands of sport governing bodies (SGBs), such as the Fédération Internationale de Football Association (FIFA)[3] and the International Olympic Committee (IOC),[4] which enter

[3] According to Article 59(1) of the Fédération Internationale de Football Association (FIFA) Statutes:

FIFA, its member associations and the confederations are the original owners of all of the rights emanating from competitions and other events coming under their respective jurisdiction, without any restrictions as to content, time, place and law. These rights include, among others, every kind of financial rights, audiovisual and radio recording, reproduction and broadcasting rights, multimedia rights, marketing and promotional rights and incorporeal rights such as emblems and rights arising under copyright law.

FIFA, FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES art. 59(1) (2024), https://digitalhub.fifa.com/m/16d1f7349fa19ade/original/FIFA-Statutes-2024.pdf [https://perma.cc/Q4B7-4896].

[4] Article 7(2) of the Olympic Charter states:

The Olympic Games are the exclusive property of the IOC which owns all rights relating thereto, in particular, and without limitation, all rights relating to (i) the organisation, exploitation and marketing of the Olympic Games, (ii) authorising the capture into host state and host city contracts (HCCs)[5] that share all the traits of contract-based investment guarantees typically associated with foreign investors. These traits include a confidential agreement governed by the private law of a state in which the investor typically demands investment guarantees far above those conferred by the host state's laws or the applicable bilateral investment treaty (BIT). The agreement is generally more favorable to the investor. The vast majority of these SGBs are neither investors nor otherwise commercial actors but, rather, entities incorporated as nonprofits in a handful of jurisdictions, chiefly Switzerland.[6] There are only a few BITs that make it unlikely for nonprofit entities to enjoy the status of foreign investors, so this is hardly a legal anomaly. Rather, one of the key issues with MSEs is that, unlike ordinary commercial contracts, where the parties have roughly equal negotiating power, there is little to negotiate in the context of HCCs. Applicant states vie for these events and readily acquiesce to any and all demands set out in the HCCs, or the instruments incorporated therein by reference to rules and regulations of the host state.

HCCs typically require the creation of a new legal entity by host states that manages all aspects of the event, alongside the host city or state and, potentially, its sport association. The host city or state is bound to establish a legislative framework that will allow this new legal entity, namely the Organizing Committee for the Olympic Games (OCOG),[7] to operate effectively with as few boundaries and as little red tape as possible.[8] In short,

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of still and moving images of the Olympic Games, and (iv) the broadcasting, transmission, retransmission, reproduction, display, dissemination, making available or otherwise communicating to the public, by any means now known or to be developed in the future . . .

INT'L OLYMPIC COMM. (IOC), OLYMPIC CHARTER art. 7(2) (2026), https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf [https://perma.cc/MGZ8-83CN].

[5] IOC, HOST CITY CONTRACT PRINCIPLES: GAMES OF THE XXXIII OLYMPIAD IN 2024 (2017) [hereinafter IOC, HOST CITY CONTRACT PRINCIPLES], https://library.olympics.com/Default/doc/SYRACUSE/171363/host-city-contract-principles-games-of-the-xxxiii-olympiad-in-2024-international-olympic-committee?_lg=en-GB [https://perma.cc/Z7NZ-E8VX].

[6] *See generally* Ilias Bantekas & Hakan Sahin, *Non-Profit Entities as Foreign Investors? The Case of International Sport Governing Bodies*, 60 STAN. J. INT'L L. 70 (2024) (arguing that despite their nonprofit status, sport governing bodies [SGBs] perform investment activities in the same manner as their commercial counterparts, save that they do not rely on bilateral investment treaties [BITs] because they are able to persuade host states to enter into individualized investment protection agreements).

[7] IOC, HOST CITY CONTRACT PRINCIPLES, *supra* note 5, at art. 3.

[8] *Id.* at art. 3(1) (referring to "maximum efficiency").

any existing law that prevents the unhindered operation of this legal entity is to be overturned. This is generally achieved through enabling laws that facilitate the work of OCOG and similar committees, which in turn serve as agents of the SGB. However, the SGB is not liable to suits and legal actions related to the operation and management of the event.[9] Enabling laws vary in quality (possessing lackluster quality in their establishment of sufficient mechanisms and institutions, in their interlinkages with existing laws, and in their setting out of procedural and substantive fairness) and in their human rights outlook. For example, the Russian Enabling Law for the 2018 FIFA World Cup contained several provisions that enabled expropriation (the taking of property, for example) and provided limited access to the courts.[10] On the other hand, the Qatari Enabling Law for the 2022 FIFA World Cup[11] went a long way to address labor grievances that had long been a thorny issue for the country.[12] In fact, Qatar integrated the

[9] *Id.* at art. 4.

[10] Федеральный закон [Federal Law], О подготовке и проведении в Российской Федерации чемпионата мира по футболу FIFA 2018 года, Кубка конфедераций FIFA 2017 года, чемпионата Европы по футболу UEFA 2020 года и внесении изменений в отдельные законодательные акты Российской Федерации [On the Preparation and Holding in the Russian Federation of the 2018 FIFA World Cup, the 2017 FIFA Confederations Cup, the 2020 UEFA European Football Championship and Amendments to Certain Legislative Acts of the Russian Federation], N 108-ФЗ, June 7, 2013 (Russ.), https://www.consultant.ru/document/cons_doc_LAW_147218/ [https://perma.cc/6WJJ-ESUP]. The Russian Enabling Law conferred on the government authority to acquire and utilize any land resources without regard for their current use as long as it deemed such action necessary for the success of the event. *Id.* at art. 27(5)–(7). There was nothing in these provisions to ensure that the change in planning did not lead to, or magnify, the displacement of the local population, implicitly providing the local and central governments with sufficient power to evict anyone for any justification tied to the World Cup. Furthermore, Paragraph (7) of Article 27 of the Russian Enabling Law provided for the fast-tracking of the process of documenting any land earmarked for infrastructural developments related to megasport events (MSE). *Id.* at art. 27(7). The speedy process, which was limited to a month, limited the ability of those affected to object to the seizure of attached land. *Id.*

[11] Law No. (10) of 2021, Regarding the Measures for Hosting the FIFA World Cup in Qatar (2022).

[12] *See* Ilias Bantekas & Marko Begovic, *The 2022 FIFA World Cup as a Catalyst for Labor Standards of Sport Professionals? A New Institutional Theory Perspective*, 14 NOTRE DAME J. INT'L & COMPAR. L. REV. 1, 2, 13 (2024) (arguing that the 2022 FIFA World Cup forced Qatar to re-examine its labor regulation for sports professionals, chiefly coaches, at a time when their labor rights were being abused by their sponsors); *see generally* Ilias Bantekas, *Migrant Labor Reforms as Human Rights Legacy of the 2022 FIFA World Cup*, 41 WIS. INT'L L.J. 289 (2024) (noting that, during the ten-year build up towards the 2022 World Cup, Qatar likewise responded to criticism of its labor rights record with a complete

human rights lessons learned from its World Cup experience into its so-called National Vision.[13] These Visions are policy statements spanning one or two decades[14] with the aim of setting out an agenda of key reforms and action plans.[15] Importantly, as in the case of Qatar, its successive Visions have placed the hosting of MSEs and general investment in sports among its three key priorities.[16] The inclusion of MSEs in these Visions demonstrates the power of SGBs (and their events) at the international stage and showcases these events as drivers of foreign policy, economic growth, and nation building.

What remains problematic, however, is the fact that in all HCCs, the SGB is immune from all liability. This includes contractual immunity (which includes immunity for breaches arising from the plethora of commercial agreements), as well as relative immunity in tortious actions arising from human rights violations committed by the SGB and its agents (the local organizing committees). It also confers some degree of legitimacy on the SGB in the event that the host state adopts an implementing instrument in the form of a formal law, policy or other that is contrary to the constitutional obligations of the host state, including the latter's human rights obligations.[17] In the classic construction of the human rights

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overhaul of its labor-sponsorship scheme, going so far as creating quasi-collective labor rights, which now form a significant part of its World Cup legacy).

[13] *See generally* Bantekas, *supra* note 12 (exemplifying that Qatar's World Cup legacy was translated into policy action in the form of its National Vision 2030).

[14] On the role and functions of Qatar's National Vision for 2030, *see* Eleni Polymenopoulou, *Human Rights in the Six States of the Gulf Cooperation Council (GCC): From Vision to Reality*, 3 CARDOZO INT'L COMPAR., POL'Y & ETHICS L. REV. 929, 969 (2020) (analyzing, chiefly, the constitutional nature of GCC nations' National Visions and claiming that they increase human rights guarantees).

[15] See id.

[16] Nadine Scharfenot, *Urban Development and Social Change in Qatar: The Qatar National Vision 2030 and the 2022 FIFA World Cup*, 2 J. ARABIAN STUD. 209, 210 (2012) (examining in detail the centrality of MSEs in Qatar's National Vision and further providing details about Qatar's bids to host sporting events, irrespective of their size or projected revenues). *See generally* QATAR GEN. SECRETARIAT FOR DEV. PLAN., QATAR NATIONAL DEVELOPMENT STRATEGY 2011–2016 (2011) (building on the QNV in that it provides specific guidance on key areas of development, with megasport events being a significant component of the strategy).

[17] By way of illustration, FIFA and the IOC, among others, prohibit political speech in their events, although the right to freedom of speech and expression can only be limited in exceptional circumstances and certainly not by private actors. *See* Ilias Bantekas, *Political Neutrality in the Rules of International Sports Federations: Compatible with Fundamental Rights of Athletes?*, 34 FORDHAM INTELL. PROP., MEDIA & ENT. L.J. 193, 214–16 (2024) (noting that the private space within which SGBs restrict athletes' freedom of expression is

architecture, states and their instrumentalities are the sole actors that are endowed with the obligations to respect, protect, and prevent human rights violations. All other nonstate actors are subject to the laws promulgated by states, which must be designed to deter and punish acts—administrative, criminal, or civil—that impact human rights.[18] While the liability of nonstate actors is a meaningful pursuit, it is important not to lose sight of the aforementioned range of obligations incumbent on states by customary and treaty law. This is important notwithstanding the plethora of soft law instruments that purport to engage the human rights liability of nonstate actors, including those used by SGBs.[19]

This state of affairs has further culminated in unchecked anticompetitive and antilabor practices that have only recently begun to be sanctioned, at least at the EU level.[20] It is generally incongruous with the

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nonetheless a violation of that right). *See generally* Eleni Polymenopoulou, *Expressing Dissent: Gag Laws, Human Rights Activism and the Right to Protest*, 32 FLA. J. INT'L L. 337 (2021) (arguing that there exists a right to protest, as an individual right, which itself is predicated on the right to freedom of expression, and that gag laws violate its very existence).

[18] *See generally* Ilias Bantekas, *Multinational Business Entities and Their Role in the Global Environmental, Social, and Governance Architecture*, 33 MINN. J. INT'L L. 49 (2024) (stating that nonstate actors are not subject to extraterritorial treaty-based regulation and that their conduct is therefore governed only by the laws of the territorial state, such that weak domestic laws translate into correspondingly weak conduct by foreign multinationals).

[19] *See, e.g.*, FIFA, FIFA'S HUMAN RIGHTS POLICY 9–10 (2017), https://media.business-humanrights.org/media/documents/files/documents/FIFAs_Human_Rights_Policy_0.pdf [https://perma.cc/HZ7M-HM2Y] (including a FIFA Human Rights Advisory Board among other initiatives). *See also* FIFA WORLD CUP QATAR 2022, SUSTAINABLE SOURCING CODE 8–11 (2d ed. 2020), https://digitalhub.fifa.com/m/03dc1047f4cf6995/original/hp3yd5g3hlqzdlko6bev-pdf.pdf [https://perma.cc/67JD-W97C] (explaining the key ingredients of FIFA's Sustainable Sourcing Code, which was applied to the 2022 World Cup, with the objective of obliging the host state to use supplies and suppliers that were consistent with the dictates of the Code); *see also* INSIDEFIFA, https://www.fifa.com/social-impact/human-rights/documents?filterId=CT2728f535-ea60-4c7a-9ff7-893dcc5a8e27 [https://perma.cc/MEJ2-Q4R6] (showing that FIFA also has human rights documents, including human rights impact assessments for tournaments in potential host cities).

[20] *See* Case C-124/21, Int'l Skating Union v. EU Commission, P, EU:C:2023:1012, 136–138; Case C-333/21, Eur. Super League Co., S.L. v. Union of Eur. Football Ass'ns, ECLI:EU:C:2023:1011, ¶¶ 129–30 (Dec. 21, 2023). Both cases involved SGBs, namely UEFA, FIFA, and the ISU, all of which restricted their members' capacity to form breakaway leagues or participate in external tournaments. *See* Ilias Bantekas & Pablo José Mercado Jaén, *Addressing the Unfettered Authority of Sport Governing Bodies Through EU Competition Law: The Effect of* International Skating Union *and* European Super League, 26 CAMBRIDGE Y.B. EUR. LEGAL STUD. 48, 52 (2024).

stated human rights aims of SGBs for them to exert no pressure on host states to improve their human rights records on the basis of feasible sanctions inserted in HCCs, and for them to share no liability, whether in contract or tort, for abuses attributed to them and to fail to facilitate the adjudication of relevant claims before the courts or specialized arbitral tribunals. When SGBs waive all liability through HCCs, not only do they remove incentives to act responsibly and in furtherance of the host's human rights obligations, but, by failing to be parties to pertinent proceedings, they allow host states to exploit injured parties' lack of access to justice.

Throughout this Article there is a tension between the undisputed sovereignty of host states and the restraints imposed upon such sovereignty by the contractual underpinnings of HCCs. To make things more complex, these restraints are offered by nonstate actors rather than states or multilateral interstate organizations. As states seek to bolster their legitimacy, investment, or financial prowess, it is inevitable that they are willing to negotiate their sovereignty, especially if it entails achieving their stated goals. The only impediments to sovereignty restraints may be found in national constitutions—governments are generally prevented from conceding national territory, for example—or in bilateral or multilateral treaties, such as human rights treaties implicitly suggesting that states cannot override human rights through contracts. HCCs have the potential to bypass constitutional and treaty-based obligations of sovereign states. There are at least three ways to mitigate this unjust outcome for victims of MSE-related human rights violations: (1) by making SGBs provide space in HCCs for aggrieved persons to initiate legal proceedings against them before particular courts (such as the courts of the country of incorporation); (2) by making a provision in the HCCs, or other contractual instrument, of a collective arbitral mechanism, as is the case with the MSE mechanism of the Court of Arbitration for Sport (CAS);[21] and (3) by permitting suits in tort in jurisdictions other than the host state (if the latter is generally hostile) on the basis of *forum non conveniens*.[22] This Article does not explore

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[21] This is achieved through ad hoc CAS divisions set up specifically for each MSE. *See* COURT OF ARBITRATION FOR SPORT (CAS), CAS ARBITRATION RULES FOR THE FIFA CLUB WORLD CUP 2025 (2025), https://jusmundi.com/en/document/rule/en-cas-court-of-arbitration-for-sport-arbitration-rules-for-the-fifa-club-world-cup-2025-cas-arbitration-rules-for-the-fifa-club-world-cup-2025-saturday-14th-june-2025 [https://perma.cc/3RB6-6SLN].

[22] *See generally* Ilias Bantekas, *Human Rights Forum Shopping in Transnational Sport Disputes*, 50 BROOK. J. INT'L L. 1 (2024) (demonstrating the complexities facing athletes when they bring human rights grievances outside of the strict framework of the Court of Arbitration for Sport [CAS]).

these three options, but instead examines other processes that have been utilized to hold actors responsible for human rights violations in the context of MSE.

The Article is organized as follows: Part I briefly explores natural justice and the rule of law in order to lay the groundwork for the need to hold SGBs accountable. Part II examines the power of courts, of the host state and others, to uphold claims in contract or tort brought by injured parties. Part III looks at the obligation of host states and the SGB to allow access to justice and facilitate such access by all available means. Part IV provides an account of the ill effects of so-called celebration capitalism, which ultimately hinders access to justice in MSEs. Finally, Part V explores the concept of limiting law enforcement agencies' power to ensure they do not undermine the law.

I. THE PRINCIPLES OF NATURAL JUSTICE SHOULD BE TAKEN INTO CONSIDERATION

A. Principles and Lessons of Natural Justice

The principles of natural justice imply the adoption of procedures or the treatment of parties to a claim in a manner that feels instinctively right and morally fair.[23] The concept has implications for fairness, equity, equality, and reasonableness in the framing and application of laws. The principle further relates to the equal application of the law to all persons.[24] Additionally, there should be an independent legal entity, which ensures that all parties to a claim are represented in court. The independence of the legal profession serves a different function from an independent judiciary; however, both work together in delivering justice. Under the rule of law, the principles of natural justice are accounted for in a number of ways. The rule of law is, or at least should be, an important dimension as to how the

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[23] See generally LYSANDER SPOONER, NATURAL LAW; OR THE SCIENCE OF JUSTICE (1882) (conceptualizing natural justice as a science of human rights with a mission to render human relations fair and peaceful).

[24] *See generally* Robert A. Stein, *What Exactly Is the Rule of Law?*, 57 HOUS. L. REV. 185 (2019) (setting out the fundamental contours of the "rule of law"—including equal application to all—in accordance with the meaning given to this term by the UN General Assembly and Lord Bingham, who was the driving force behind its formulation and concretization).

lex sportiva is perceived by states, [25] which in turn informs whether regulatory measures are needed to prevent and deter abusive conduct.

First, there are concerns about whether FIFA and the IOC can be held responsible for MSE-related human rights violations, thereby ensuring that prevention, mitigation, and redress of victims become the concern of states rather than nonstate actors. [26] To start, it is imperative to understand the institutional characteristics of the SGBs and their role before and during MSEs. The most viable description of the two aforementioned SGBs is that of "transnational entities," whereby SGBs do not have absolute immunity and autonomy, but possess sufficient international influence and power to impose norms and rules on other stakeholders, including states and private contractors. [27] There are doubts about whether SGBs can be held responsible for MSE-related human rights violations. After all, the two SGBs (FIFA and the IOC) serve as legislative, judicial, and enforcement agencies with respect to the rules and regulations they adopt and enforce

[25] The so-called *lex sportiva* is a transnational body of private law that is kept consistent and uniform by the case law of the CAS. The vast majority of SGB rules and their dispute resolution bodies provide that CAS shall have jurisdiction at first instance or as a final form of appeal. These processes ensure that all sports law (contractual and regulatory) is both consistent and uniform.

[26] Seamus Byrne & Jan Andre Lee Ludvigsen, *Sport Mega-Event Governance and Human Rights: The "Ruggie Principles," Responsibility and Directions*, 42 LEISURE STUD. 156, 156–57 (2023) (elaborating on the volume of emphasis that has been placed on the business and human rights principles set out by the late John G. Ruggie, concluding that their application to MSEs seems evident).

[27] Arnout Geeraert, The Limits and Opportunities of Self-Regulation: Achieving International Sport Federations' Compliance with Good Governance Standards, 10 EUR. SPORT MGMT. Q. 520, 521–22, 532–33 (2019) (suggesting that sport governing bodies are allowed to regulate their own affairs to avoid rendering sport a playground for political action and state corruption, but that such regulation needs to be supplemented with state regulation to avoid private corruption). See generally Antoine Duval, Transnational Sports Law: The Living Lex Sportiva, in THE OXFORD HANDBOOK OF TRANSNATIONAL LAW 493 (Peer Zumbansen ed., 2021) (explaining that the lex sportiva is the private, contractually based, regulatory framework underpinning not only the international operations of sport governing bodies, but also their relationship with states); Leonardo Casini, The Making of a Lex Sportiva by the Court of Arbitration for Sport, 12 GERMAN L.J. 1317 (2011) (arguing that while the lex sportiva has been created by contract, it has been concretized by the arbitral awards of the Court of Arbitration for Sport [CAS] on the basis that arbitral awards are binding and enforceable under the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards); JEAN-LOUP CHAPPELET & BRENDA KÜBLER-MABBOTT, THE INTERNATIONAL OLYMPIC COMMITTEE AND THE OLYMPIC SYSTEM: THE GOVERNANCE OF WORLD SPORT 59 (2008) (explaining that the IOC, while formally a private association under Swiss law, is in fact operating as a multinational enterprise with the privileges and immunities of international organizations).

against their members.[28] While it is necessary for the SGBs to apply *lex sportiva* in some of the technical aspects that fall under global sports law, it is also necessary for SGBs to recognize the role of domestic and international law in achieving the rule of law.

Furthermore, both the IOC and FIFA are founded through private instruments, as nonprofit entities under Swiss law.[29] While their members are not nation-states, those members represent and act in the interest of specific nation-states.[30] As a result, the conclusion that the IOC and FIFA are entities that enjoy the attributes of international organizations with enhanced rights as compared to regular intergovernmental organizations raises a host of issues that have not been addressed in practice or in the literature. Even though SGBs do enjoy enhanced privileges and immunities in the countries wherein they are incorporated, this is not because of their status, but, rather, because of subsequent HCCs or laws passed by the host state in order to appease the SGB in question.[31] Because SGBs have relied

[28] *See generally* Gabriel N. Cazotto, Maurício Fronzaglia & Joaquim Racy, *Institutional Aspects of FIFA Governance and Its Impact on International Relations,* 12 AM. J. INDUS. & BUS. MGMT. 824 (2022) (noting that FIFA's chief product, the World Cup, allows it to wield significant power against states that are eager to host it and that, given that it is a monopoly, FIFA's governance is not typical of a nonprofit foundation, but rather that of a powerful international stakeholder); Ilias Bantekas, *High Value Transnational Adhesion Contracts: Agreements with Sport Governing Bodies and Their Fundamental Defects*, 23 SANTA CLARA J. INT'L L. 1 (2025) (arguing that because all vertical agreements with dominant SGBs are not negotiable, they are by implication adhesion contracts, albeit without the ordinary protective mechanisms for the weaker party one finds in adhesion contracts, as is the case with consumer protection).

[29] According to Article 60 of Swiss Civil Code, "Associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association." SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODICE CIVILE [CIVIL CODE] [CC] Dec. 10, 1907, SR 210, RS 210, art. 60 (Switz.). *See* Margareta Baddeley, *The Extraordinary Autonomy of Sports Bodies Under Swiss Law: Lessons to Be Drawn*, 20 INT'L SPORTS L.J. 3, 5 (2020).

[30] Shuang Lin, Asif Khan & Yu Song, Upholding Human Rights in Mega Sports: A Study of Governance Practices Within the IOC and FIFA Through the Lens of the Ruggie Principle, 10 HELIYON 1, 8 (2024) (indicating that the Ruggie principles provided a framework for corporate entities to assimilate and enforce internationally recognized human rights standards into their policies).

[31] Accord entre le Conseil fédéral suisse et le Comité International Olympique relatif au statut du Comité International Olympique en Suisse [Agreement between the International Olympic Committee (IOC) and Switzerland relating to the status of the IOC in Switzerland], Annex 6 (Nov. 1, 2000), https://archive.icann.org/en/psc/annex6.pdf [https://perma.cc/GKN8-2ZRZ]; David J. Ettinger, Comment, *The Legal Status of the International Olympic Committee*, 4 PACE Y.B. INT'L L. 97, 103–09 (1992); Alexandre

on the *lex sportiva* in order to create arbitral or quasi-arbitral mechanisms to resolve internal disputes, it is imperative that their mechanisms are sufficiently flexible and rules-based, transparent, and consistent with the right to a fair trial.[32] Such procedures should be aligned with the rule of law in its international dimension as already discussed.[33] There should also be a right to full disclosure in the event of arbitral or other proceedings against any entity, the outcomes of which (such as arbitral awards) should be enforceable.[34]

B. Accountability Gaps Under Current Structures

FIFA enjoys unparalleled influence over associated nation-states from an economic, social, and political perspective, with limited constraints in

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Mestre, Opinion, *The Legal Basis of the Olympic Charter*, 7 INT'L SPORTS L.J. 100, 100–01 (2008) (examining the legal nature of the IOC as a nonprofit entity under Swiss law, albeit subject to an exceptional regime in several respects, including tax, immunities, and governance). Such preferential treatment is now commonplace, and countries are in competition for hosting SGBs on their territory. By way of example, the Badminton World Federation (BWF), a nonprofit entity, relocated to Malaysia because the government of that country subjected it to the International Organizations (Privileges and Immunities) Act of 1992, which granted the BWF all the privileges and immunities of international organizations. Declaration of Badminton World Federation as an International Organization Under the International Organizations (Privileges and Immunities) Act of 1992, Malay-Badminton World Federation, Jan. 31, 2019, P.U. (A) 363. *See generally* Ilias Bantekas, *Dispute Resolution in the Badminton World Federation:* Sui Generis *Expert Determination?*, 20 S.C. J. INT'L L. & BUS. 1 (2024) (discussing the governance structure of the BWF, including the history and politics underlying such structure and diffusion of duties and powers).

[32] *See generally* Blaine Sanders, *Play On? An Evaluation of FIFA's Legal Regime and Its Foundation in Alternative Dispute Resolution*, 56 VAND. J. TRANSNAT'L L. 283 (2023) (arguing that the *lex sportiva* of FIFA is a unique creation with an equally unique variety of dispute resolution mechanisms that can run counter to the aims of formal regulation set out by state laws, while its arbitral mechanisms are not always consistent with the right to fair trial).

[33] For a definition of the rule of law, see generally THOMAS H. BINGHAM, THE RULE OF LAW (2010) (formulating the classic definition of the rule of law and the conditions which must underlie it).

[34] *See* Ilias Bantekas, *The Resolution of Professional Tennis Disputes*, 14 J. INT'L DISP. SETTLEMENT 488, 488–89 (2023) (providing one example of an SGB instituting a complex array of arbitral and quasi-arbitral proceedings to resolve disputes arising from the conduct of its members); Ilias Bantekas, *Equal Treatment of Parties in International Arbitration*, 69 INT'L & COMPAR. L.Q. 991, 993, 996 (2020) [hereinafter Bantekas, *Equal Treatment of Parties in International Arbitration*] (demonstrating the peremptory nature of the European Convention on Human Rights [ECHR] and European Court of Human Rights [ECtHR] case law over and above contractual and arbitral undertakings).

commercial, legal, or reputational domains.[35] It also has the power to sanction member states that participate in its events and has utilized this power in the past for a multiplicity of rationales.[36] This influence can impact the dispensation of natural justice. However, the IOC, which holds the status of a Permanent Observer under the UN General Assembly, has similar power since it can access and influence the agenda of meetings by the same assembly.[37] Despite its nongovernmental nature, the IOC effectively possesses the power to make decisions that uniquely impact states' sports and cultural policies and politics with lasting social and financial consequences.[38] It is thus no wonder that several scholars suggest that the IOC and FIFA have attained a sui generis international legal personality as a matter of state practice, even if to a limited extent.[39]

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[35] Unlike conventional investors that at best rely on existing BITs, SGBs can force states to enter into private contracts in the form of host-state agreements in order to gain more agreements or more extensive investment guarantees. IOC enters into a Host City Contract (sometimes called Olympic Host Contract) with the host state. FIFA's agreement is called Host Country Agreement (HCA). For instance, following Tokyo's successful bid as the host city for the Games of the XXXII Olympiad, a Host City Contract was signed between the Tokyo Metropolitan Government (TMG), the Japanese Olympic Committee (JOC), and the IOC. This agreement serves as an example for host city contracts for Olympic Games. *See* FIFA, HOST CITY CONTRACT: GAMES OF THE XXXII OLYMPIAD IN THE YEAR 2020 – TOKYO 4–11 (2013), https://www.2020games.metro.tokyo.lg.jp/hostcitycontract-EN.pdf [https://perma.cc/MUB9-LAD3]. See also, as an example, the host city agreement between FIFA and the FIFA World Cup Organising Committee of Brazil in 2014, FIFA, HOST CITY AGREEMENT 5 (2011), https://transparencia.prefeitura.rio/wp-content/uploads/sites/100/2023/07/Contrato_Cidade_Copa_2014_Ingles.pdf [https://perma.cc/FWT3-A7A8].

[36] Lin, Khan & Song, *supra* note 30, at 7–8; *see generally* Ilias Bantekas, *Sports Sanctions Against Russia Through the Lens of the Court of Arbitration for Sport*, 42 CARDOZO ARTS & ENT. L.J. 1 (2024) (recalling how CAS upheld the executive decision of FIFA and UEFA to expel Russian football clubs and the country's national team from their competitions, albeit on contractual, rather than political, grounds).

[37] Nicolien van Luijk, *The International Olympic Committee: A United Nations Permanent Observer of Post-Politics?*, 21 INT'L AREA STUD. REV. 134, 138–40 (2018) (explaining the role and function of the IOC as an observer in the UN and its global role as a political actor in international affairs).

[38] Travis Nelson & M. Patrick Cottrell, *Sport Without Referees? The Power of the International Olympic Committee and the Social Politics of Accountability*, 22 EUR. J. INT'L RELS. 1, 3 (2015) (arguing that the IOC "is strongly connected to the state system and exerts a considerable amount of power over political issues that states and other actors seem to care about a great deal").

[39] William Thomas Worster, *Coming Full Circle: The International Legal Status of the International Olympic Committee*, 31 U. MIA. INT'L & COMPAR. L. REV. 389, 423–29 (2024) (arguing that the IOC has achieved an international legal personality that goes

Worster highlighted the ambiguity of the IOC's position within the international community, as well as its contentment with such a status, by stating that the IOC is:

> Part sporting event, part non-governmental organization, part Swiss association, part international organization, and perhaps part something else. . . . With the revision of the Olympic Charter in 2023, the IOC had an opportunity to revise or clarify its position on its juridical status and declined to do so. As such, its juridical status continues without clarity. One can only presume that the IOC finds it to its advantage to operate in this ambiguous fashion, because the lack of clarity appears deliberate.[40]

The fluidity of the IOC's corporate personality and status, which currently entails elements of domestication as well as internationalization,[41] is an anomaly in the general framework of international legal personality. It wields political power greater than many states, is able to enter into preferential agreements with states, functions as an investor, and possesses a significant amount of assets. Yet, it does not possess any of the burdens and liabilities of states, intergovernmental organizations, multinational corporations, or even natural persons. While it is necessary to establish a governance structure, this can also impede due process and the achievement of natural justice. Its status as an international legal person can be attributed to the objectives of its founders.[42] However, its status and formal designation should not be a perpetual shield for justifying an exclusionary approach toward its liability for actions that it would otherwise be responsible for. Its influence extends to regional intergovernmental sports entities in Europe and Africa, as well as organizations involved in humanitarian aid. All these factors highlight the extent to which the SGBs, through active or passive means, impede the principles of natural justice for victims of MSE-related human rights violations.

Regardless of its status, it is widely recognized that the IOC's role as an SGB makes it responsible for the negative outcome of the MSEs under its

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beyond what is expressed in its instrument of incorporation or its status under the law of Switzerland).

[40] *Id*. at 390.

[41] *Id*. at 398–402.

[42] *Id.* at 404–06.

authority and whose operation it has contracted to agents.[43] However, international relations scholars echo the concerns of other researchers by emphasizing that despite the numerous accusations and evidence of:

> [C]orruption, corporate greed, and hypocrisy . . . Why have so few stakeholders, including the states that host the events and field the teams, engaged in serious efforts to hold it accountable for its actions? In addition, what can the experience of the International Olympic Committee tell us about accountability in global governance more generally?[44]

Second, the complex web of institutional and contractual relations among the actors involved in organizing an MSE presents a challenge in identifying the party that is responsible for the particular MSE-related human rights infringement.[45] Even when it is possible to identify the entities responsible, the process of holding them accountable under international law is not always straightforward. The ability of individual victims to initiate proceedings against an entity such as FIFA is limited by procedural and logistical requirements. Regarding the 2022 FIFA World Cup that was hosted in Qatar, scholars observed that "[t]he problem [with MSE-related human rights violations] is that only a very few of these cases are actually addressed in the sense that rights-holders receive an effective remedy and those responsible for the abuse are held to account."[46] There have been times when victims are faced with a multiplicity of practical and legal impediments that make it challenging for actors who violate human rights to be held responsible under the existing legal frameworks.[47]

To address the challenges in achieving the rule of law through principles of natural justice, a combination of procedural and substantive

[43] See generally Emmanuel Bayle, Changes to the IOC's Governance During Thomas Bach's Presidency: Intense Institutional Work to Achieve Balance and Compromise, 27 SPORT SOC'Y 1749 (2024) (arguing that the Bach years represented an attempt by the IOC's President to reshape and recalibrate governance anomalies within the IOC and particularly to engage with criticism).

[44] Nelson & Cottrell, *supra* note 38, at 1 (excerpted quote from abstract) (arguing that the IOC operates in a global legal environment that is devoid of any overseeing authority because it dispensed its obligations through contract and, hence, is not accountable to any state or affected persons).

[45] *Id.* at 10–14.

[46] Daniela Heerdt & Lucas Roorda, Lessons Learned in Qatar: The Role of the Netherlands and Its Businesses in Addressing Human Rights Abuses in Mega-Sporting Events, 70 NETH. INT'L L. REV. 19, 19 (2023).

[47] Byrne & Ludvigsen, *supra* note 26, at 162–64.

rules should be utilized. These challenges can be attributed to the ambivalence of SGBs like FIFA and the IOC to facilitate the adjudication of claims relating to MSE-related human rights violations. FIFA and the IOC have grown in terms of influence at the international level and, as a consequence, are able to delegate all liability to their agents—which are effectively the host states and national organizing committees as explained in the introduction.[48] Host states and their organizing committees are content to bear all liability because contractual damages are manageable (through so-called efficient breach) given the political and financial gains from a global MSE such as the Olympics or the FIFA World Cup.

It should be noted that in the current dispute resolution architecture of global sports law, the CAS only entertains disputes of a purely sporting nature, leaving disputes related to the operation of an MSE, such as those concerning workers' rights, to local courts. CAS ordinarily draws its jurisdiction from the HCCs, which do not give CAS authority over human rights-related claims or disputes. In this respect, the employer would be the local organizing committee as well as the subcontractor to which the project in question had been awarded. Therefore, and in the absence of SGB accountability, it is imperative that other more efficient mechanisms are equally put in place to address these issues.

A more efficient and meaningful way to protect construction workers' rights is by instituting mandatory collective or individual arbitration under the HCCs at no expense to the workers, including access to qualified counsel free of charge. Equally, the HCCs may provide that the host state is obliged to expedite such claims before its courts. The procedures adopted during the *FK Pobeda* case established jurisprudence on how expert advice can be utilized in the adjudication of cases, whereby a private party relies on input from experts to succeed against a well-established transnational entity.[49] The case led to the development of the concept of "comfortable

[48] *See generally* Sven Junghagen & Mads Aurvandil, *Structural Susceptibility to Corruption in FIFA: A Social Network Analysis*, 12 INT'L J. SPORT POL'Y & POL. 630 (2020) (suggesting not that FIFA is corrupt, but rather that its particular model of governance, namely the one-member-one-vote, provides incentives for smaller and less powerful members to be individually corrupted for their votes).

[49] *See generally* JOHAN LINDHOLM, THE COURT OF ARBITRATION FOR SPORT AND ITS JURISPRUDENCE: AN EMPIRICAL INQUIRY INTO LEX SPORTIVA (2019) (representing one of the first studies to examine the fairness of CAS proceedings by reference to the *lex sportiva*); Johan Lindholm, *Can't Buy Me Arbitrator Love? How Party-Appointed Arbitrators Help "Haves" Come Out Ahead in Sports Arbitration*, 41 ARB. INT'L 287 (2025) (arguing that, whereas party-appointed arbitrators may be less problematic in arbitration between parties of equal capability, this finding calls into serious question the fairness and legitimacy of using

satisfaction" under *lex sportiva*, as opposed to the burden of proof in criminal liability cases, where proof beyond a reasonable doubt is required. Furthermore, the role of *lex sportiva* became apparent, since the lack of the requisite regulations to sanction this type of infringement implied that the CAS had to rely on rules from a third-party entity in the process.[50] In response to the decision, Serby observed:

> [While this I]s a first in several respects, not only for UEFA but also for the CAS . . . one of the very first procedures that has led to sanctions being imposed against a club and individuals about the fixing of football matches. . . . Quite clearly, it is extremely important because it is the first decision connected with the fixing of football matches at [the] European level. Unfortunately, it is unlikely to be the last.[51]

In more recent times, institutions that work with experts such as Amnesty International and Human Rights Watch play an integral role in holding SGBs accountable. The reports by these institutions highlight the efficacy of due diligence and timely interventions by stakeholders, thus showing that a significant proportion of human rights infringements can be prevented or remedied through improvements in institutional and governance mechanisms. Similarly, individual experts have also taken up

party appointments in arbitration where there is a disparity in capability between the parties).

[50] FK Pobeda v. UEFA, CAS 2009/A/1920, at ¶ 99 (Apr. 15, 2010).

[51] Tom Serby, *Sports Corruption: Sporting Autonomy,* Lex Sportiva *and the Rule of Law*, 15 ENT. & SPORTS L.J. 1, 2 (2017) (second and third alterations in original) (quoting Jean-Samuel Leuba, *Match-Fixing:* FK Pobeda et al. v. UEFA (CAS 2009/A/1920), *in* SPORTS BETTING: LAW AND POLICY 162, 162, 172 (Paul M. Anderson et al. eds., 2011)). It is not surprising therefore that FIFA presidents have received not only harsh criticism about their managerial conduct and their relationships with hosts and bidders but have been the subject of criminal investigations. *See Gianni Infantino: FIFA Closes Ethics Violation Case Against President*, BBC (Aug. 19, 2020), https://www.bbc.com/sport/football/53838579 [https://perma.cc/LV3W-M5G7]; Matt Bonesteel, *FIFA President Facing Criminal Investigation in Switzerland*, WASH. POST (July 30, 2020), https://www.washingtonpost.com/sports/2020/07/30/fifa-president-facing-criminal-investigation-switzerland/ [https://perma.cc/ZK2B-EWK2] (referring to an investigation arising from a covert meeting the FIFA President had with the Swiss attorney general, the latter covering up the meeting, and the President's lies to his supervisors about it).

the responsibility, as shown by the Ruggie Report [52] and the work undertaken by Garcia and Borbély. [53]

In summary, this Part highlighted the scenarios where the principles of natural justice—specifically fairness, equity, equality, and reasonableness—contribute to the rule of law during MSEs. A number of MSE-related human rights violations arise because the MSE laws fail to account for natural justice. While MSEs are short-term events, their legacy is long-lasting.

II. THE COURTS SHOULD HAVE THE POWER TO IMPLEMENT RULE OF LAW PRINCIPLES OTHER THAN THE *LEX SPORTIVA*

The purpose of this Part is to highlight that while the courts must respect the *lex sportiva*—given its contractual nature and the authority of contracts in domestic laws—they must not do so at the expense of the principles underlying the rule of law. Key among these principles is the exclusion of human rights claims in the *lex sportiva*, which is fundamental in the constitutional order of states. The authority of the courts to dispense justice and the rule of law is an integral part of impartial adjudication. [54] In addressing MSE-related human rights violations, courts are faced with myriad barriers that can impede the rule of law. Raz explains that "justice" in this context is not merely a rigid application of the law, but, more importantly, the review of existing laws to ensure their conformity with the principle of rule of law. [55]

Consequently, the courts have the responsibility to focus on a broad range of relevant principles to ensure full redress for victims and effective deterrence. [56] MSE-related human rights violations are the product of the actions of private, public, national, and international actors, who directly

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[52] JOHN G. RUGGIE, FOR THE GAME, FOR THE WORLD: FIFA AND HUMAN RIGHTS (2016), https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf [https://perma.cc/MX3P-N225].

[53] MICHAEL J. GARCIA & CORNEL BORBÉLY, REPORT ON THE INQUIRY INTO THE 2018/2022 FIFA WORLD CUP BIDDING PROCESS (2017), https://www.courthousenews.com/wp-content/uploads/2017/06/FIFA-REPORT.pdf [https://perma.cc/X8LX-2F4T].

[54] Joseph Raz, The Authority of Law: Essays on Law and Morality 217 (1979).

[55] Id.

[56] RUGGIE, *supra* note 52, at 5–8.

or indirectly cause or contribute to violations.[57] The complexity of the various operations involved in the hosting of an MSE blurs the lines of accountability, responsibility, liability, and culpability of each category of actors.[58] These actors include the host state, the responsible SGB, private contractors, and specialized legal persons, such as OCOG and multinational corporations. Similarly, some of the infringements are the product of unintended consequences of actions in different lifecycles of the MSE.[59] In some cases, complaints raised by outsiders are quashed, since they are based on laws other than those of the host country. In the process of addressing MSE-related human rights violations, it is imperative to identify the responsible actors to ensure accountability. However, due to the diversity of actors responsible for the actions and outcomes in MSEs, some challenges make it difficult and sometimes impossible to ensure that someone is held reasonably responsible. These challenges are attributed to what Heerdt terms the "blurred lines," stating:

> [T]he lines of responsibility and accountability for actions taken in the context of staging MSEs, but also for harms that happen linked to these events, are blurred, which makes it difficult for rights-holders to understand what happened, identify the responsible parties, and hold them to account.[60]

The fuzzy relationships further lead to the shifting of blame among different actors, thus enabling some actors to avoid responsibility for their

[57] *See generally* Rachel Davis, *The Role of Sports Governing Bodies in Embedding Respect for Human Rights into Mega-Sporting Events*, *in* THE ROUTLEDGE HANDBOOK OF MEGA-SPORTING EVENTS AND HUMAN RIGHTS 197 (William Rook, Shubham Jain & Daniela Heerdt eds., 2023) (suggesting that SGBs are not necessarily the source of human rights violations, but that there is very little regulation by host and home states of their dealings with SGBs, which in turn gives rise to a human rights gap).

[58] *See generally* DANIELA HEERDT, BLURRED LINES OF RESPONSIBILITY AND ACCOUNTABILITY: HUMAN RIGHTS ABUSES AT MEGA-SPORTING EVENTS (2021) (arguing that human rights obligations are incumbent on states, who in turn are happy to suggest SGBs must shoulder some responsibility also, while both enter into contractual arrangements that waive all liability for SGBs)

[59] John Horne, Understanding the Denial of Abuses of Human Rights Connected to Sports Mega-Events, 37 LEISURE STUD. 11, 18 (2018).

[60] Daniela Heerdt, *Addressing Human Rights Abuses at Mega-Sporting Events—A Shared Responsibility in Theory and Practice*, 4 FRONTIERS SPORTS & ACTIVE LIVING 1, 3 (2023) (positing that sports law is applied during MSEs to the extent that it relates to sporting activities and norms that govern sports in general).

actions.[61] Several propositions have been advanced to address this challenge, with the concept of shared responsibility emerging as a viable methodology.[62] Shared responsibility is useful in "situations where a multiplicity of actors contributes to a single harmful outcome, and legal responsibility for this harmful outcome is distributed among more than one of the contributing actors."[63] This case highlights why courts have to apply additional principles other than those provided under sports law.[64] Although the rules under FIFA limited the victims in the case to abide by the procedural and substantive rules under the CAS, the victims' recourse to the European Court of Human Rights was a triumph because the Court determined that the CAS did not provide a fair and just forum to redress harms to victims. This highlighted the need for CAS and the Swiss Federal Supreme Court (the competent court that reviews annulment claims against CAS awards) to adopt human rights principles.

III. ELIMINATING DIFFICULTIES IN ACCESSING JUSTICE MECHANISMS

[61] Raquel Regueiro, *Shared Responsibility and Human Rights Abuse: The 2022 World Cup in Qatar*, 25 TILBURG L. REV. 27, 31–32 (2020). *See generally* PAUL MICHAEL BRANNAGAN & DANYEL REICHE, QATAR AND THE 2022 FIFA WORLD CUP: POLITICS, CONTROVERSY, CHANGE 85–113 (2022) (pointing out that Qatar's joy of hosting the event was overshadowed by the intense international scrutiny over its human rights and labor record).

[62] *See generally* PRINCIPLES OF SHARED RESPONSIBILITY IN INTERNATIONAL LAW: AN APPRAISAL OF THE STATE OF THE ART (André Nollkaemper & Ilias Plakokefalos eds., 2014) (suggesting that, in the event of international harm caused by the actions or omissions of several actors, responsibility may be shared, particularly where the harmful act can be attributed to each of them).

[63] *Id.* at 5.

[64] Mutu & Pechstein v. Switzerland, App. Nos. 40575/10, 67474/10, ¶¶ 92–123, 178–83 (Oct. 2, 2018), https://hudoc.echr.coe.int/eng?i=001-186828 (holding that CAS proceedings amounted to compulsory arbitration, which obliged them to provide all the procedural safeguards enunciated in Article 6 of the ECHR, including the right to a public hearing). The same outcome was confirmed by the ECtHR, see Semenya v. Switzerland, App. No. 10934/21, ¶¶ 199–239 (July 10, 2025), https://hudoc.echr.coe.int/eng?i=001-244348. *See generally* Faraz Shahlaei, *The Collision Between Human Rights and Arbitration: The Game of Inconsistencies at the Court of Arbitration for Sport*, 40 ARB. INT'L 169 (2024) (explaining that the human rights inconsistency of CAS may be explained, among others, by the flexible nature of arbitral proceedings, inadequate expertise in human rights law among counsel and arbitrators, and the possibility of favoritism toward sport governing bodies, but that these inconsistencies in CAS jurisprudence make it an ineffective remedy for human rights violations, absent reform); Bantekas, *Equal Treatment of Parties in International Arbitration*, *supra* note 34 (discussing all key judgments from the ECtHR where the right to fair trial arising from arbitral proceedings was claimed by injured parties).

The principle of access to justice denotes the need for robustness of enforcement mechanisms to ensure that all victims can access responsive and independent courts or mutually beneficial arbitral mechanisms.[65] The accessibility of adjudication eliminates the possibility that the rights assured under the law are without remedies.[66] It entails the establishment of a judicial (including arbitral) institutional infrastructure capable of handling all claims brought before it. Eliminating challenges in accessing adjudication also relates to the principle of legal subordination, whereby the law applies to everyone who is in the jurisdiction of the enforcement entity.[67] The principle of access to justice further requires that an independent judiciary has the authority to determine a human rights violation, even if other bodies of law and regulation, such as the *lex sportiva*, command otherwise. This is particularly relevant in the context of MSEs because, as previously emphasized, HCCs generally discard human rights claims, with the expectation that the courts of the host state will not assume jurisdiction over these. Eliminating barriers to justice mechanisms can be achieved in the following ways.

A. Availability of Dispute Resolution Mechanisms

The principle of ease of access to adjudication (or right of access to justice) relates to whether the approaches for the resolution of disputes are

[65] On the right to a fair trial before specialized sporting judicial and quasi-judicial entities, see generally Mutu v. Switzerland, App. Nos. 40575/10, 67474/10 (Oct. 2, 2018) (the case generally concerned whether CAS provided the range and quality of fair trial guarantees demanded by courts and tribunals under the European Convention of Human Rights).

[66] A determination as to whether or not proceedings are fair, according to established case law, must be assessed by reference to their entirety. *See* Ankerl v. Switzerland, App. No. 17748/91, ¶ 38 (Oct. 23, 1996), https://hudoc.echr.coe.int/eng?i=001-58067; Centro Europa 7 S.R.L. v. Italy, App. No. 38433/09, ¶ 197 (June 7, 2012), https://hudoc.echr.coe.int/eng?i=001-111399.

[67] *See* Mutu v. Switzerland, App. Nos. 40575/10, 67474/10, ¶ 113 (Oct. 2, 2018), https://hudoc.echr.coe.int/eng?i=001-186828 (discussing the right to fair trial before specialized sporting judicial and quasi-judicial entities and holding that CAS proceedings amounted to compulsory arbitration). *See also* Ali Riza v. Turkey, App. Nos. 30226/10, 17880/11, 17887/11, 17891/11, 5506/16, ¶¶ 216, 218, 222-23, 246 (Jan. 28, 2020), https://hudoc.echr.coe.int/eng?i=001-200548 (finding a violation of Art. 6(1) of the ECHR because the Arbitration Committee of the Turkish Football Federation (TFF) suffered from structural deficiencies that allowed external influence—amounting to a lack of full independence—in its decision-making capacity).

available without delays or cost-related limitations.[68] The measures to eliminate difficulties in accessing adjudication have two roles, which are relevant to MSE-related human rights violations: first, they enable victims to seek and get redress; and second, they create deterrence among potential violators by communicating the message that violators will face sanctions.[69] Under international law, the procedures for holding nation-states responsible for actions are outlined under the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).[70] Heerdt summarizes ARSIWA into two key steps based on provisions under Article 2: "Elements of an internationally wrongful act of a state,"[71] beginning:

> The first step is to attribute the conduct that caused the violation to a state, whereby conduct can include an action or omission; the second step is to check whether this conduct constitutes a breach of an international obligation of the respective state or international organization.[72]

This Article provides the basis for attributing the MSE-related human rights infringements to the host country. Because MSEs involve different actors at various stages of the MSE lifecycle, a number of technical challenges arise for attributing MSE-related human rights infringements to the host country. This challenge is heightened by the fact that victims have different domiciles. The different mechanisms of attributing responsibility under international law fail to address a scenario where several actors are involved and a variety of victims are affected.[73]

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[68] Trista Turley, When the 'Escape' Ends: Responsibility of the IOC and FIFA at the Intersection of Sport Law and Human Rights, 6 NOTRE DAME J. INT'L & COMPAR. L. 145, 150 (2016); see also Ilias Bantekas, Sport Arbitration and Human Rights: An Overview of the Semenya Judgment Before the European Court of Human Rights, HARV. HUM. RTS. J. ONLINE (2025), https://journals.law.harvard.edu/hrj/2025/01/sport-arbitration-and-human-rights-an-overview-of-the-semenya-judgment-before-the-european-court-of-human-rights/ [https://perma.cc/FGJ2-E63K] (arguing that while SGBs might have enjoyed the right to exclude transgender and intersex athletes from female competitions on the basis of sport fairness, they had no right to violate other rights, particularly the right to fair trial).

[69] Turley, *supra* note 68, at 150–52.

[70] G.A., annex, Responsibility of States for Internationally Wrongful Acts art. 2 (Dec. 12, 2001), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf [https://perma.cc/L9AY-YAD4], *corrected by* U.N. Doc. A/56/49(Vol. 1)/Corr.4.

[71] *Id.*

[72] HEERDT, *supra* note 58, at 137.

[73] Regueiro, *supra* note 61, at 35–37.

The two SGBs under consideration in this Article (FIFA and the IOC) impose limitations on the extent to which victims can seek redress through domestic courts. Based on Rule 61 on Dispute Resolution of the Olympic Charter 2020, disputes relating to activities of the IOC are only handled by the CAS. Rule 61 states:

> 1. The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS).
>
> 2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.[74]

Similarly, Article 51 of the FIFA Statutes prohibits victims of activities relating to its events from seeking legal recourse in ordinary courts.[75] It states:

> 1. The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to [intermediaries and licensed match agents].
>
> 2. Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.[76]

These provisions are in line with international law, which only applies to nation-states. Consequently, the accountability of nonstate actors such as FIFA and the IOC can only be established under the domestic law of the country where they are registered.[77] In explaining the particular

[74] OLYMPIC CHARTER, *supra* note 4, at art. 61.

[75] FIFA STATUTES, *supra* note 3, at art. 51.

[76] *Id.*

[77] David McGillivray et al., A Conceptual Model and Research Agenda for Bidding, Planning and Delivering Major Sport Events that Lever Human Rights, 38 LEISURE STUD. 175, 181–83 (2019).

circumstances of such an exigency, Professor McGillivray and others highlight that SGBs involved in the organization of MSEs have:

> On one level, both the International Olympic Committee (IOC) and FIFA [claim] to be concerned with human rights, expressing a desire that those nations hosting their events adhere to the [Universal Declaration of Human Rights] both in principle and in practice. However, on the other, both organisations have shied away from accepting responsibility for monitoring, and acting upon, human rights abuses in the hosting of their main event assets.[78]

These measures highlight the conflicting scenario in which victims of MSE-related human rights violations find themselves. Contradictions exist in the differences between what the SGBs commit to achieving in terms of human rights standards and what is practically possible. While it is easy to suggest model human rights clauses that should be incorporated in all HCCs, ultimately it is a matter of public pressure. SGBs can just as easily choose those host states that openly disregard such model clauses, or those which take no practical action to enforce them. In equal measure, it is doubtful that the country of incorporation of SGBs would impose an obligation by law for such model human rights clauses. In any event, an ideal clause would require host states to take any and all action to uphold existing laws to prevent and punish action that impedes human rights and require host states to hold SGBs liable in tort for any harm against persons arising from the MSE in question.

B. Claims for Private Damages in International Judicial Forums

The UN International Law Commission's Articles on State Responsibility established claims between states, even if the victims in question were private actors. Equally, the Articles made it clear that a state could be held liable for an illegal act committed by a nonstate actor, provided that the act or conduct could be attributed to a state or its instrumentality. Article 5 of the Articles on State Responsibility, for example, emphasizes:

[78] *Id.* at 178.

> The conduct of a person or entity which is not an organ of a State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.[79]

It is therefore irrelevant in the context of MSEs whether the harmful conduct in question was done by an entity that is private and not administratively connected to the host state.[80] Host states can of course mitigate, or even expunge, any liability for conduct performed by an SGB, such as when they refuse to comply with the conduct of the SGB, especially when they allow injured parties full and unimpeded recourse to their courts or similar mechanisms. Consequently, in instances where the host country has failed to lead the adjudicative process and the victim of the MSE-related human rights violation has no recourse where they are domiciled, a number of governance gaps emerge.[81] The scenario is highlighted in a claim launched in the Commercial Court of the Canton of Zürich by victims of MSE-related human rights violations during the preparations for the 2022 FIFA World Cup. The case was initiated by three employee union associations on behalf of an individual,[82] with three key claims.[83]

The Swiss court rejected the claims by the plaintiffs on account of what it termed "formal reasons," for example, that the request for the introduction of new laws in Qatar was vague and illegal.[84] Furthermore, since FIFA was not the employer, the plaintiffs should not have launched the claim before the Labor Tribunal in Switzerland, since the alleged offenses did not occur in Switzerland.[85] However, the Court noted that FIFA had a duty to take the necessary measures, as FIFA itself was involved in the MSE. FIFA was also responsible for conducting due diligence and

[79] *See generally* G.A., annex, Responsibility of States for Internationally Wrongful Acts, *supra* note 70, at art. 5.

[80] Regueiro, *supra* note 61, at 35–37.

[81] *Id.* at 38.

[82] Haley Christenson, For the Game. For the World. But What About for the Workers? Evaluating FIFA's Human Rights Policy in Relation to International Standards, 20 SAN DIEGO INT'L L.J. 93, 98 (2018) (arguing that despite FIFA's Human Rights Policy, its oversight of supply chains and labor abuses is poor and inconsistent).

[83] Beryl Ph. ter Haar, The FIFA 2022 World Cup and Labour Rights—Seizing the Moment for Labour Law Reforms in Qatar, 4 KUTAFIN U.L. REV. 139, 153–57 (2017).

[84] Regueiro, *supra* note 61, at 38.

[85] Christenson, *supra* note 82, at 115.

using its influence over the actors involved in the FIFA World Cup projects to ensure compliance with fundamental human rights standards (as these are articulated in international human rights treaties, custom, and general principles).

The Swiss court further asserted that only Qatar, and not FIFA, was in a position to introduce changes to the labor and human rights issues facing the workers in Qatar.[86] In addition, the Swiss court indicated that the plaintiffs failed to articulate what conduct by FIFA was illegal. Finally, the court indicated that it lacked subject-matter jurisdiction over the damages claim by the plaintiff, because the plaintiff was not a tradesman under the Commercial Registry in Switzerland. The jurisdictional issues arose from the fact that the Swiss court only dealt with commercial disputes. For the plaintiff's claim to qualify as a commercial dispute under the jurisdiction of the court, he would have to register as a tradesman under the Commercial Registry in Switzerland, register as a tradesman under the Commercial Registry in his home country, or limit his actions to commercial activities. In the context of the type of contractual arrangements in place for the projects, it would be challenging for manual workers to automatically be aware of such requirements.[87] Manual workers, just like consumers, will likely not examine or understand whether they satisfy any substantive requirements inherent in the dispute resolution clause of their agreement. In fact, this is something that only an experienced lawyer would know in advance. Furthermore, most of the semi-skilled and unskilled workers, who made up the bulk of the victims of the MSE-related human rights violations, came from countries with limited literacy levels.[88]

The decision issued by the Commercial Court of Zürich was accepted by FIFA, which asserted its utmost commitment to preventing and mitigating human rights violations.[89] While the basis for the judgments is justifiable, it is also apparent that FIFA, the contractors, and Qatar took

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[86] *Id.* at 99.

[87] *Id.* at 98–99.

[88] *See generally* Sami Abdulrahman Alhamidi & Seham Mansour Alyousef, *Health Literacy of Migrant Workers in Saudi Arabia: A Cross-Sectional Survey*, 20 WORLD FAM. MED. / MIDDLE E.J. FAM. MED. 67 (2022) (revealing, through an empirical study, low levels of literacy and health awareness among unskilled migrant workers in Saudi Arabia).

[89] FIFA, Media Release, *Swiss Court Rejects Labour Unions' Claim Against FIFA Concerning Qatar 2022* (Jan. 6, 2017, at 10:12 CET), https://inside.fifa.com/organisation/media-releases/swiss-court-rejects-labour-unions-claim-against-fifa-concerning-qatar--2862363 [https://perma.cc/2KWR-67Y4].

advantage of the gaps in the law to ensure that the workers had limited recourse for any harm incurred.

Furthermore, because FIFA ultimately determines the World Cup host country, it has the power to select countries that are capable of preventing the most common MSE-related human rights violations.[90] FIFA can also go further to compel the host country to take the necessary measures to mitigate any apparent issues, while also pushing for redress for all victims of the infringements.[91]

Private parties face insurmountable redress challenges from death or injury claims arising from MSEs.[92] Amnesty International reports that the estimated fatalities among migrant workers were 6,500 by the end of the 2022 World Cup.[93] The estimated official death toll per the Secretary General of Qatar's Supreme Committee for the Delivery of Legacy is between 400 and 500 worker fatalities.[94] Yet, there are no reports of successful redress for victims of the MSE-related human rights violations concerning the Qatar World Cup event. The absence of such evidence could imply the existence of logistical and structural barriers to justice for victims of MSE-related human rights violations during this particular MSE.[95] The absence of accurate reports about how many workers were affected by the violations signifies the extent to which access to justice is limited.[96] Furthermore, while there are similarities in the causes, effects,

[90] *Id. See generally* Eleni Polymenopoulou, *Sharia and Human Rights in the Constitutional Framework of Gulf States*, 46 HUM. RTS. Q. 1 (2024) (explaining that Sharia does not play a great role in the legislation of Qatar and the majority of other Gulf states, save for Saudi Arabia, and that, therefore, there is no debate in these countries about the incompatibility of international human rights laws with Sharia).

[91] ter Haar, *supra* note 83, at 151–53.

[92] Christenson, *supra* note 82, at 98–99.

[93] Pete Pattisson et al., *Revealed: 6,500 Migrant Workers Have Died in Qatar Since World Cup Awarded*, GUARDIAN (Feb. 23, 2021, at 01:00 ET), https://www.theguardian.com/global-development/2021/feb/23/revealed-migrant-worker-deaths-qatar-fifa-world-cup-2022 [https://perma.cc/U6JD-3DXT].

[94] Sammy Mngqosini, *Qatar World Cup Chief Says Between 400 and 500 Migrant Workers Have Died in Projects Connected to the Tournament*, CNN (Dec. 12, 2022, at 07:15 ET), https://www.cnn.com/2022/11/29/football/qatar-world-cup-migrant-worker-deaths-spt-intl/index.html [https://perma.cc/Q88H-YC6W].

[95] Jonathan Liew, *World Cup 2022: Qatar's Workers Are Not Workers, They Are Slaves, and They Are Building Mausoleums, Not Stadiums*, INDEPENDENT (Oct. 4, 2017, at 19:25 BT), https://www.independent.co.uk/sport/football/international/world-cup-2022-qatars-workers-slaves-building-mausoleums-stadiums-modern-slavery-kafala-a7980816.html [https://perma.cc/AVC3-98KM].

[96] Amnesty Int'l, The Ugly Side of the Beautiful Game: Exploitation of Migrant Workers on a Qatar 2022 World Cup Site 4, 5 (2016),

and characteristics of the victims of the MSE-related human rights violations, the existing procedural rules mandate that each claim be investigated and adjudicated individually.[97] While individual adjudication may be appropriate in situations where the claimants have ample resources, it is inappropriate in situations where claimants are many, largely illiterate, and under fear of deportation or expulsion. In such cases, a larger volume of claimants allows for the pooling of resources and better access to counsel, allowing for their collective voice to be heard. It also allows the courts or tribunals to appreciate the scale of the problem and suggest policy adjustments, which would not otherwise be possible through individual suits.

The regulatory regimes put in place by SGBs function in conjunction with the domestic laws of a country. Essentially, an MSE-related human rights violation might also imply illegality under the law of the land. The situation can precipitate conflicts, especially if the domestic courts claim adjudicatory jurisdiction over an issue that is covered under sports law. It can be even more problematic if the SGB claims autonomy, or if it perceives the involvement of the state as being unconducive to its own interests. SGBs such as FIFA and the IOC are cautious about protecting their autonomy through the tenets of global sports law. To become a member, any nation-state or private actor has to accede to the condition that it does not compromise the independence and autonomy of the SGB. Similarly, both FIFA and the IOC have deployed their broad contractual authority to influence the actions of sports entities, as well as to force nation-states to suspend policies and legislation that can interfere with the MSE. This is exactly why Article 51 of the FIFA Statutes, as already stated, obliges member associations to accept the jurisdiction of CAS and accept its awards.

Given that states are reluctant to interfere with the autonomy of SGBs—and in fact promote this as far as possible, as is the case of

https://www.amnesty.org/en/documents/mde22/3548/2016/en/ [https://perma.cc/8LXH-BU42].

[97] HEERDT, *supra* note 58, at 30; *see also* Arnout Geeraert, Jens Alm & Michael Groll, *Good Governance in International Sport Organizations: An Analysis of the 35 Olympic Sport Governing Bodies*, 6 INT'L J. SPORT POL'Y & POL. 281, 282–84 (2014) (arguing that the watchdog function of national member organizations is severely undermined by the general absence of objective criteria and transparency in the distribution of funding to members and stating the more worrying fact of the complete lack of independent ethics committees, ultimately demonstrating that while most SGBs have institutionalized athlete participation, the overwhelming majority have not been granted a share of formal decision-making power).

Switzerland—they also protect the contractual arrangements of SGBs, even if these contractual arrangements turn out to restrict human rights. In practice, only a handful of claims, all of which have taken over a decade to conclude, have managed to break this vicious cycle, and none of them have been directly related to MSEs. Key among these was the *Semenya* case, which concerned an intersex athlete who was subjected to a particular set of regulations by her SGB, namely World Athletics, that was in violation of several provisions of the European Convention on Human Rights. The Swiss Federal Supreme Court did not find a contradiction between these regulations and the Swiss Constitution and the Swiss state itself was of a similar view given that it never took any action to address the issue. The applicant was able to gather sufficient resources to fight her case for well over a decade and was ultimately provided redress by the European Court of Human Rights.[98]

IV. THE OVERSHADOWING EFFECTS OF "CELEBRATION CAPITALISM"

The unique responsibility to host an MSE can essentially elevate the status of the host country, thereby shielding it from domestic and international criticism. Boykoff coined the term "celebration capitalism," arguing that the Olympics, and by extension all MSEs, are nothing other than a massively planned economy thrust on the poor and the middle classes for the benefit of the rich.[99] Celebration capitalism assumes that states use MSEs through private-public partnerships to maximize the earnings of private actors at the expense of the public, hosting majestic spectacles to shield the state from its accountability. Some host countries have exploited this celebration capitalism, as well as the status attached to hosting MSEs, to impose limitations on the rights of certain individuals and groups.[100] Travers[101] and Shearman[102] highlight scenarios where the processes

[98] *See* Ilias Bantekas, *Intersex and Transgender Athletes and Access to Effective Remedies*, 39 WIS. J.L., GENDER & SOC'Y 1, 3–5 (2024) (providing a timeline of the *Semenya* case from the first judgment by World Athletics all the way up to the ECtHR).

[99] *See generally* JULES BOYKOFF, CELEBRATION CAPITALISM AND THE OLYMPIC GAMES (2013) (explaining why the IOC understands well the function of celebration capitalism, as well as the goals of states bidding to host the Games). *See also* Malcolm MacLean, *Celebration Capitalism and the Olympic Games*, 36 SPORT HIST. 131, 132, 134 (2016) (reviewing *id.*).

[100] HEERDT, *supra* note 58, at 139.

[101] Professor of Sociology at Simon Fraser University.

[102] Professor of Sociology at Concordia University.

associated with the preparations and hosting of MSEs are used as a justification for the introduction of laws and policies that engender human rights violations.[103] Both FIFA and the IOC continue to intensify celebration capitalism, under their MSEs, whereby the feel-good claims fueled by collective euphoria are deployed to mask any potential risks to the public, including MSE-related human rights violations.[104] The celebration capitalism, which is also sometimes adopted by the host countries, can lead to the discounting of certain human rights violations. In explaining the scenario, Ziegler highlighted:

> South Africa had no other choice than to succumb to all authoritarian demands by the FIFA. The Rainbow Nation wanted to show the world that it was capable of organising a really major international event, though it had to make a lot of sacrifices, such as gentrification and increasing social inequalities, on that path. Practically, South Africa had to infringe on every article of the [UN General Assembly's] Bill of Rights.[105]

However, the dilemma described by Ziegler is not unique to South Africa, since other host nations, such as Brazil, Russia, and Qatar, have found themselves in a similar situation.

A. Structural Barriers to Adjudication

The existing legal frameworks are faced with five key gaps preventing them from achieving optimal adjudication. The first gap is scenarios where mechanisms for redress are available, with widespread awareness among parties to sporting events, but the mechanisms do not comply with human rights standards.[106] The biggest obstacle to accountability is attribution. Redress claims require a causal link between an illegal act and the harmful

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[103] *See generally* Ann Travers & Mary Shearman, *The Sochi Olympics, Celebration Capitalism, and Homonationalist Pride*, 41 J. SPORT & SOC. ISSUES 42 (2017) (examining how Russia used the Sochi Winter Olympic Games to silence dissent from marginalized groups and minorities).

[104] Wade P. Smith, *Celebration Capitalism and the Olympic Games*, 33 SOCIO. SPORT J. 371, 372 (2016) (reviewing BOYKOFF, *supra* note 99).

[105] Robert Ziegler, *Human Rights Violations at the 2010 World Cup in South Africa*, 6 INT'L J. HUM. RTS. & CONST. STUD. 126, 130 (2018).

[106] Adriaan Bedner, *An Elementary Approach to the Rule of Law*, 2 HAGUE J. ON RULE L. 48, 54 (2010).

outcome, but this is difficult to substantiate for an SGB such as FIFA, which has conferred all obligations arising from an MSE to a specialized legal entity set up by the host state. While there is clarity on how to address outcomes that are the product of a specific action, complications develop when the outcome stems from multiple causes, thereby creating an interrelated web of causal links.[107] From a legal standpoint, it becomes necessary to establish specific standards and tests to establish the primary causal links and justify the perspective. In a report relating to MSE-related human rights violations, Ruggie described the scenario by stating:

> But if an arbitration system is going to deal effectively with human rights-related complaints, it needs certain procedural and substantive protections to be able to deliver on that promise. While the FIFA dispute resolution system and the CAS' 300-plus arbitrators who sit at the peak of the system may be well equipped to resolve a great variety of football-related disputes, they generally lack human rights expertise.[108]

Using the shared responsibility framework, this Article argues that the host nation and Switzerland should be held responsible for the MSE-related human rights violations where they will be obligated to offer reparations to the victims.[109] Thus, to prevent diffusion of responsibility, the obligations of Switzerland and those of host states are not diminished by the involvement of the other.[110] The diffusion of responsibility can create precedents that influence jurisprudence. However, there are challenges in how responsibility is shared between the nation-states and FIFA, due to the following reasons. International law frameworks lack primary rules that impose liability on FIFA, even when it fails to uphold its obligations under guidelines, obligations, and other soft law instruments.[111] Based on the

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[107] Zachary R. Calo, *Labor Rights and Dispute System Design: Assessing the Legal Legacy of the 2022 Qatar World Cup*, 24 GERMAN L.J. 1729, 1733 (2023) (pointing to a variety of root causes, each of which is complicated and interwoven with all others).

[108] RUGGIE, *supra* note 52, at 26.

[109] Regueiro, *supra* note 61, at 38.

[110] André Nollkaemper, *Issues of Shared Responsibility Before the International Court of Justice*, *in* EVOLVING PRINCIPLES OF INTERNATIONAL LAW: STUDIES IN HONOUR OF KAREL C. WELLENS 199, 202–03 (Eva Rieter & Henri de Waele eds., 2012).

[111] *See generally* Azadeh Erfani, *Kicking Away Responsibility: FIFA's Role in Response to Migrant Worker Abuses in Qatar's 2022 World Cup*, 22 JEFFREY S. MOORAD SPORTS L.J. 623 (2015) (arguing that because FIFA's relationship with host states is purely contractual, it

positivist theory of law, FIFA's violations during a World Cup event cannot be entirely attributed to Switzerland or the host country. Through the application of normative pluralism, FIFA serves as the only regulator of soccer across the globe. [112] In some cases, FIFA plays a central role in influencing the actions of nation-states. This type of co-regulatory approach is unviable, since laws are instruments of nation-states rather than legal or natural persons.

The second type of gap is scenarios where mechanisms for remedies are available, but some marginalized victims (individuals or groups) lack access or information about the availability of such remedies. [113] The alleged actors may come from different jurisdictions, all of which have differing legal systems, thus leading to further diversification of the legal character of the contractual obligations and agreements. In cases involving displacements of local and Indigenous populations, the victims of the MSE-related human rights infringements are not parties to the contractual framework of the ISGBs. [114] As a result, unless a concerned entity raises the claim on behalf of the victims, it is impossible to attain redress. There is limited success, thanks to the operation of the *forum non conveniens* doctrine, [115] with extraterritorial tort claims before a select number of national courts, chiefly the UK, France, and Canada. However, in the relatively few cases that have been successful, the claim was against a corporate entity operating abroad with a tangential link to the forum (or the country where the tort claim was lodged). [116] There are no reported extraterritorial claims with respect to

typically waives its own liability and only produces hortatory instruments and declarations that are not subject to sanctions, even contractual, should the host state fail to adhere).

[112] Cem Abanazir, *Normative Pluralism and Sporting Integrity*, 19 SPORT, ETHICS & PHIL. 124, 129 (2025).

[113] Megan Corrarino, "Law Exclusion Zones": Mega-Events as Sites of Procedural and Substantive Human Rights Violations, 17 YALE HUM. RTS. & DEV. L.J. 180, 192–93 (2014).

[114] RUGGIE, *supra* note 52, at 11–14.

[115] The difficulty of such claims is evident from several judgments by courts that have disfavored extraterritorial claims. *See, e.g.*, AAA & Others v. Unilever PLC [2018] EWCA (Civ) 1532 [36]–[40] (QB) (emphasizing that a UK parent company is not burdened with a duty of care with respect to harm caused by one of its subsidiaries abroad). *See also* Kalma v. African Minerals Ltd. [2020] EWCA (Civ) 144 [110]–[152] (QB) (holding that a UK corporation operating abroad was not responsible for the abusive action of the police in that country, even if the action in question was meant to protect the interests of that corporation).

[116] *See* Ilias Bantekas, *The Emerging UN Business and Human Rights Treaty and Its Codification of International Norms*, 12 GEO. MASON INT'L L.J. 1, 11–15 (2021) (highlighting a select number of successful applications). *See also* Cour de cassation [Cass.]

harms arising from MSEs, but this is probably because of a legal complexity: SGBs have contractually shielded themselves from liability, whereas host states enjoy a considerable degree of immunity. However, there is nothing shielding individual contractors from abusive treatment amounting to extraterritorial torts.

The third category of gap is infringements against human rights for which no mechanisms for remediation exist. [117] Some scenarios, such as those linked to religion or gender, are too broad and complex to be covered or resolved under sports law since they involve matters that are not perceived as torts by national law, even if they are framed as human rights issues by international human rights treaties. As a result, sports law, whether under the international or global domain, is incapable of fully adjudicating such an issue. [118]

Fourth is a scenario where the SGB makes exemptions for its actions under "MSE law," thereby creating immunity for its actions. [119] For instance, FIFA reserves the right to demand additional guarantees from host nations, depending on the characteristics of the specific event. These are meant to shield FIFA from liability, but they could also include human rights guarantees, such as unimpeded access to persons from all nationalities, genders, or religions. South Africa acceded to seventeen guarantees, [120] while Brazil offered eleven guarantees for the 2014 FIFA

[supreme court for judicial matters] crim., Sept. 7, 2021, Bull. crim., No. 19-87.367 (Fr.) (finding, in an exceptional case, that Lafarge, a French company operating a cement factory in ISIS-held Syria, was liable as a corporate entity for crimes against humanity because of its use of slave labor provided by ISIS); Vedanta Resources PLC v. Lungowe [2019] UKSC 20, [45]–[46], [92] (appeal taken from EWCA (Civ) 1528) (U.K.) (finding that a parent company's duty of care for the overseas operations of its subsidiaries is a sound doctrine); Nevsun Res. Ltd. v. Araya, [2020] 1 S.C.R. 166, 178–85 (Can.) (confirming that Canadian companies may be liable for breaches of customary and jus cogens law in respect of extraterritorial torts); *contra* AAA & Others v. Unilever PLC [2018] EWCA (Civ) 1532 (QB).

[117] Christenson, *supra* note 82, at 101–02.

[118] See generally Arnout Geeraert, The Limits and Opportunities of Self-Regulation: Achieving International Sport Federations' Compliance with Good Governance Standards, 19 EUR. SPORT MGMT. Q. 520 (2019) (arguing that while self-regulation allows SGBs to operate with zero red tape, ultimately they may use their power in order to abuse their members, particularly if they are allowed to perpetuate a monopoly).

[119] Corrarino, *supra* note 113, at 190.

[120] KGALEMA MOTLANTHE, 2010 FIFA WORLD CUP SOUTH AFRICA 5 (2010), https://www.gcis.gov.za/sites/default/files/docs/resourcecentre/multimedia/sa2010_govprep.pdf [https://perma.cc/9LB9-97T9].

World Cup event.[121] In Brazil, the guarantees involved indemnification from lawsuits, with the host country agreeing to cover the costs of any lawsuits associated with the event.[122] During the bids for the 2018 and 2022 FIFA World Cup events, FIFA required the bidding countries to provide certain guarantees:

> No.1 deals with visa and entry permits; No. 2 is about work permits; No. 3 addresses tax exemption and No. 4 concerns safety and security; No. 5 talks about protection and exploitation of commercial rights; No. 6 telecommunication and information technology and finally No. 7 is on indemnification and all other legal issues.[123]

While a number of these demands can be justified on account of enabling the preparations for the event to be carried out seamlessly, such as Government Guarantee No. 3 relating to work permits, some demands are not justified.[124] The exemption from laws that impede outright crimes, such as was the case with money laundering for the UK in the 2018 FIFA World Cup bidding process, serves as an example. The guarantee stated:

> The UK is not entitled to suspend or disapply requirements imposed on the UK as a member of the EU to intervene in transactions where, for example, there is the possibility of money laundering or breach of financial sanctions.[125]

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[121] *See generally* Rômulo Meira Reis et al., *Management and Legacy of the Brazil 2014 FIFA World Cup During Its Candidacy Bid*, 25 MOTRIZ: REVISTA DE EDUCAÇÃO FÍSICA [MOTRIZ: REV. EDUC. FIS.] (Braz.), no. 2, 2019, e101963, at 1.

[122] *Id.*

[123] Qatar provided additional guarantees, including entry and exit procedures, exemption on certain taxes, support for banking and foreign exchange restrictions, and others. These are reflected in articles 13ff of Qatar's Enabling Law No 10/2021, as well as Qatari Ministry of Finance Decision No. 9 of 2022. *See* KPMG, KPMG TAX ALERT: TAX EXEMPTIONS AND CUSTOMS PROCEDURES RELATED TO FIFA WORLD CUP QATAR 2022 (2022), https://assets.kpmg.com/content/dam/kpmg/us/pdf/2022/11/tnf-qatar1-nov22-2022.pdf [https://perma.cc/KP3Y-P3K6].

[124] *See generally* Shubham Jain, *Resistance and Reform as Responses to Human Rights Criticism: Relativism at FIFA World Cup Qatar 2022*, 24 GERMAN L.J. 1691 (2023) (arguing, wrongly in the opinion of the authors, that Qatar used a selective strategy of human rights advancement to appease its critics while at the same time resisting demands by reliance on cultural relativism).

[125] Ministry of Justice, *Government Legal Statement – Amendment* (Oct. 18, 2010), Government Guarantee No. 5 (U.K.),

The authors believe that this requirement is indicative of the inclination of FIFA to expect host countries to facilitate certain activities in contravention of domestic and international law, and to accept the possibility of committing human rights violations.[126] It also highlights the possibility that FIFA is acquiescent to assigning hosting responsibilities to countries that are willing to contravene international law.[127] Such an inclination can also signify that the host nation has a weak system for observing human rights standards.

Lastly is the scenario in which the international sporting entity is perceived as having the duty to utilize its unique leverage to influence nation-states toward the prevention of human rights abuses.[128] The leverage, as well as the widely shared perspective, arises from the utility of sports as a unifying exercise across the globe. However, this option is only reserved for extraordinary scenarios, in which the human rights infringements are so prominent that they cannot be overlooked.

In summary, this Part culminates in the following conclusions. First, SGBs, such as FIFA and the IOC, enjoy sufficient political, financial, and contractual leverage for the mitigation or prevention of MSE-related human rights violations, and, thus, they must utilize their leverage accordingly. This includes the prevention and mitigation of MSE-related human rights violations. Second, if FIFA and the IOC lacks leverage, they should look for ways to increase or acquire it, due to their integral position in the MSE lifecycle. As outlined under the principles of *lex sportiva*, these institutions should implement the rules and utilize the principles of autonomy to address the problems associated with MSE-related human rights violations. Finally, if FIFA or the IOC lacks leverage as well as the ability to acquire or increase it, they should consider vacating their position to enable other institutions to obtain the leverage to oversee MSEs.

V. LIMITING LAW ENFORCEMENT AGENCIES' POWER TO ENSURE THEY DO NOT UNDERMINE THE LAW

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https://assets.publishing.service.gov.uk/media/5a7c326de5274a25a91411ab/foi_worldcup_legal220211.pdf [https://perma.cc/9CWW-WXBQ].

[126] Erfani, *supra* note 111, at 632–33.

[127] Sahiba Gill, Edouard Adelus & Francisco de Abreu Duarte, *Whose Game? FIFA, Corruption and the Challenge of Global Governance*, 30 EUR. J. INT'L L. 1041, 1045–48 (2019).

[128] Nelson & Cottrell, *supra* note 38, at 8–10.

"Law enforcement" in this Part should be perceived as broader than what one typically associates with police or prosecutorial authorities. Indeed, while these entities can play a crucial role in the investigation of torts, given the tendency of all MSE stakeholders to minimize their risk and liability, other actors should be tasked with exposing or preventing MSE-related abuses. Key among these are independent labor inspectors, as well as private or public auditors monitoring corporate and investor compliance. The actions of law enforcement agencies during MSEs can also influence the rule of law. These institutions are involved in the prevention, investigation, and prosecution of offenses and torts, which implies that their actions can cause subversion of the law. To achieve the rule of law, law enforcement agencies need to be impartial in investigating and prosecuting all offenses, regardless of the status of the offender. Law enforcement agents should also allocate their resources fairly and equitably, to ensure that they detect, prevent, and prosecute all types of offenses.[129] The responsibility of enforcing laws during MSEs falls under the authority of law enforcement agencies in the host country, although these are not fully described in advance in the host country contract.[130] There is no reason why corporate and state actors involved in MSEs should not be subjected to existing general mechanisms, such as ombudspersons and voluntary corporate audit mechanisms.

The role of the two SGBs as regulatory and adjudicatory agencies arises from their unique position in the MSEs that they organize. The SGBs utilize a private legal system, which is necessary as a matter of global sports law due to the nature of the activities that they regulate and enforce. However, there are a series of procedural norms for law enforcement that should not be discounted. First, the application of "Ruggie Principles" implies that ISGBs such as FIFA and the IOC have to adopt due diligence, coupled with human rights impact assessments (HRIAs).[131] General

[129] Sam K. Andrews, *Sports Governance and Ethics: Investigating Global Efforts to Ensure Fair Play and Integrity in Sports*, 2 INT'L J. ARTS RECREATION & SPORTS 1, 5 (2023) (showing that sports fairness is a pursuit that cannot be achieved through substantive rules, requiring multifaceted approaches).

[130] *See generally* Ilias Bantekas, *FIFA's One Association-One Vote Rule: Does Democratic Governance Ensure Its "Corporate" Identity?*, 14 AM. U. BUS. L. REV. 53 (2024) (suggesting that FIFA's Council, while democratic in nature because it allows all associations to cast a vote, ultimately has fallen prey to corruption, leading the author to claim that perhaps the one association-one vote rule is inappropriate for FIFA's most important decisions, namely the decision on which country should host the World Cup).

[131] Byrne & Ludvigsen, *supra* note 26, at 162–64.

Comments by treaty bodies emphasize the obligation of states to carry out HRIAs in the context of budgeting, business activities, trade and investment agreements, and the privatization of public services, including potential extraterritorial human rights impacts.[132] Most intergovernmental organizations oblige their organs and subentities to undertake HRIAs through internalized guidelines. The EU and its institutions are obliged to conform to HRIAs when undertaking activities of this nature.[133] The Court of Justice of the European Union, which supersedes member states' courts in the interpretation of EU law, has made it clear that HRIAs are indispensable in the drafting and implementation of EU law.[134] There have been several cases where EU institutions, as well as lobby groups, have intervened to expose EU agreements with developing countries, particularly in the context of the EU's new generation of free trade agreements where HRIAs were effectively ignored. Such omissions are typically handled by an EU Ombudsperson who, on occasion, has found the existence of maladministration.[135]

In support, Müller coined the phrase "mega-event syndrome" to explain a fundamental precipitating factor for the occurrence of MSE-related human rights infringements.[136] There are claims that neither FIFA nor the IOC has taken any concrete measures under the channels available through international law to prevent the violation of the rights of different parties to sporting events. In some cases, these failures arise due to the lack of institutional capacity.[137] For instance, Ruggie stated:

> FIFA plays three related roles at the same time. . . . All three roles involve standards and regulations. FIFA acts vigorously to

[132] U.N. Econ. & Soc. Council (ECOSOC), Committee on Economic and Social Rights (CESCR), General Comment No. 24, ¶¶ 17, 21–22, E/C.12/GC/24 (Aug. 10, 2017); U.N. Convention on the Rights of the Child, Committee on the Rights of Children (CRC), General Comment 19, ¶ 47, UN Doc CRC/CG/19 (July 20, 2016).

[133] Commission Staff Working Paper, Operational Guidance on Taking Account of Fundamental Rights in Commission Impact Assessments, SEC (2011) 567 final (May 6, 2011).

[134] *Schecke and Eifert v. Land Hessen* (joined cases C-92/09 & C-93/09) [2010] ECR-I-11063.

[135] *See, e.g.*, EU Ombudsman, Draft Recommendation, No. 59398, Case 1409/2014/JN (Mar. 26, 2015), https://www.ombudsman.europa.eu/en/recommendation/en/59398 [https://perma.cc/PS35-PBMH].

[136] Martin Müller, The Mega-Event Syndrome: Why So Much Goes Wrong in Mega-Event Planning and What to Do About It, 81 J. AM. PLAN. ASS'N 6, 6 (2015).

[137] Lin, Khan & Song, *supra* note 30, at 7–8.

> develop and enforce regulations related to its institutional and commercial interests. But when it comes to many other matters, even where the rules are robust, FIFA's capacity to ensure their implementation is often lacking, and FIFA relies heavily on self-regulation by the parties to which the rules are addressed. Reference has already been made to FIFA's own recognition that its oversight of member associations' use of FIFA funding falls well short and requires improvement.[138]

The refusal of these institutions to adopt a proactive stance in ensuring that international law frameworks are oriented toward the protection of the basic human rights of parties to sporting events is unjustified.[139] After all, these institutions can and should shoulder a significant role in the pursuit of human rights, through their enhanced status as actors under international law, with options including the facilitation of treaties.

Second, the multiplicity of scandals that have tarnished the reputation of professional sports activities, and sometimes events, has highlighted the need for enhanced governance, with a focus on ethical standards.[140] The aforementioned reforms span across multiple levels from the local to the international, without overlooking how sports management and associated organizations are managed. For example, a report by McPhee and Dowden regarding the independence of investigation into human rights abuse within the sporting sector provides several conclusions that are of importance in this Article.[141] It alludes to the weaknesses that enabled the infringements by U.S. Gymnastics' team doctor, Larry Nassar: first, the sports culture is a blend of norms specific to the United States and the Olympic sporting purview.[142] Based on the report, while positivity is fostered through patriotism, commitment to distinction and collaboration, these artifacts created an environment for sexual predation to occur, by wearing down the

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[138] RUGGIE, *supra* note 52, at 26–27.

[139] See generally Nicole-Amanda Brandofino, Kicking the Law: The Effects of FIFA Regulations on a World Cup Host Country's Legislative Process in Regards to Intellectual Property, 45 BROOK. J. INT'L L. 301 (2019) (arguing that FIFA, unlike the case with human rights, places immense pressure on bidding and host states to fast-track their intellectual property [IP] laws with the sole purpose of ensuring the financial integrity of FIFA's own IP rights).

[140] Geeraert, *supra* note 118, at 520–25.

[141] Joan McPhee & James P. Dowden, Ropes & Gray, Report of the Independent Investigation: The Constellation of Factors Underlying Larry Nassar's Abuse of Athletes (2018) https://www.ropesgray.com/-/media/files/usoc/ropes-gray-full-report.pdf [https://perma.cc/3PFZ-QLA3].

[142] *Id.* at 100, 110, 149.

implicit obstacles to abusive treatment and limiting the opportunities for victims to voice their grievances.[143] Similarly, the weak governance model originally instituted by U.S. Gymnastics, which retained a centralized decision-making character, established intrinsic enablers for the abuse due to disarticulation between the policies and actions at the institutional level. These circumstances created an environment where emergent norms, policies, and practices did not protect the vulnerable and compromised the effectiveness of the interventions in place.[144] The approach adopted by the United States Olympic Committee paved the way for SGBs to adopt rules, policies, and practices that were inadequate in addressing the risks of abuse among athletes, thereby leading to an array of deficient mechanisms for complaints by parties in Olympic sports.[145] The failure was most prevalent among the most vulnerable.

> [T]he sport rendered athletes inherently vulnerable . . . [T]here were embedded cultural norms unique to elite gymnastics that eroded normal impediments to abuse while at the same time reducing the likelihood that survivors would come forward. The culture was intense, severe and unrelenting. It demanded obedience and deference to authority. It normalized intense physical discomfort as an integral part of the path to success.[146]

In diagnosing the cause of the problem, the U.S. Olympic Committee identified the gaps in institutional infrastructure, including the roles played by facilitating institutions and lawyers, who impeded the process of raising complaints while also throttling cases involving abuse for no apparent tangible reason other than economic incentives.[147] In recognition of this prominent challenge, the Institute for Human Rights and Business offered insights to FIFA regarding the need for proactivity in its governance mechanisms, stating:

> All countries face human rights challenges, but more effective and sustained due diligence is clearly needed with respect to

[143] *Id.* at 167–98.

[144] Brendan Schwab, *Protect, Respect and Remedy: Global Sport and Human Rights*, 3 SWEET & MAXWELL'S INT'L SPORTS L. REV. 52, 55–56 (2019).

[145] *Id.* at 57–59.

[146] *Id.* at 56 (alterations in original) (quoting MCPHEE & DOWDEN, *supra* note 141, at 3).

[147] Id.

> decisions about host nations and how major sporting events are planned and implemented.[148]

Third, it is now imperative that novel technologies be utilized with a view to facilitating more effective regulation of stakeholders involved directly or indirectly in MSEs. The infusion of capital toward this end is also known as regulatory capitalism.[149] While this seems attractive, experience shows that SGBs either employ data to serve their stated aims or refuse to pay heed to the outcomes that conflict with their investment activities.[150] Nelson and Cottrell use the example of the data analytics innovations adopted by CAS to track illegal betting activities, while the World Anti-Doping Agency (WADA) relies on chromatography and mass spectrometry to detect cases of doping.[151] Increased self-regulation, through intrainstitutional and interinstitutional relations that proliferate outside the influence or control of the state, plays an integral role in how MSEs are run.[152] SGBs utilize a cascade of contractual obligations to ensure compliance, with the links involving international, regional, national, and local entities.

Fourth, the increased impact of specialists in international networks facilitates the efficiency and effectiveness of law enforcement during MSEs.[153] The involvement of knowledge actors has led to regulatory capitalism, with professionals and technocrats involved in the export and

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[148] INST. FOR HUM. RTS. & BUS., OPEN LETTER (June 11, 2014), https://ihrb-org.files.svdcdn.com/production/assets/uploads/statements/2014-06-11-Open-Letter-FIFA.pdf?dm=1726490132 [https://perma.cc/R2NS-VECA] (letter from the Institute for Human Rights and Business to the President of FIFA, Joseph Blatter).

[149] Geoff Nichols & Rita Ralston, The Legacy Costs of Delivering the 2012 Olympic and Paralympic Games Through Regulatory Capitalism, 34 LEISURE STUD. 1, 3 (2015).

[150] *See generally* Ilias Bantekas, *Is Organized Gambling a Threat to the Integrity of Transnational Individual Sports Competitions?*, 25 SAN DIEGO INT'L L.J. 23 (2024) (arguing that the International Tennis Federation's (ITF) lucrative betting agreements are responsible for the increase in match-fixing in games where the athletes are unlikely to even cover their expenses, regardless of the fact that the ITF does not perceive that such betting gives rise to corruption).

[151] Nelson & Cottrell, *supra* note 38, at 13–15; Maria Kristina Parr & Francesco Botrè, *Supercritical Fluid Chromatography Mass Spectrometry as an Emerging Technique in Doping Control Analysis*, 147 TRENDS ANALYTICAL CHEM. 1, 2–3 (2022).

[152] *See generally* Kathryn Henne, *Reforming Global Sport: Hybridity and the Challenges of Pursuing Transparency*, 37 L. & POL'Y 324 (2015) (arguing that transparency reforms in SGBs generally tend to fail because they do not account for the complex, commercial, and hybrid structures of the SGBs themselves).

[153] Geeraert, *supra* note 118, at 524–26.

import of regulatory order, institutional infrastructures, and knowledge.[154] The transfer mostly occurs between leading countries in the West and the peripheral countries in the global South. Windholz observed:

> [T]he IOC, WADA and other international sporting federations operate as "command and control institutions" employing their systemic power to drive systemic change across multiple national policy makers. And one source of their systemic power is their "in-house" subject-matter expertise that governments find difficult to replicate.[155]

While the transfer is often associated with improvement in governance outcomes, the potential is minimal, and it is not always positive.[156] Since the two ISGBs work together with domestic law enforcement agencies during MSEs, these agencies have a responsibility to ensure that they do not undermine the existing laws in the host countries. A number of complications arise from this situation. First, the plurality of actors involved in an MSE, coupled with the diversity of those actors, magnifies the challenges in the establishment of mechanisms for legal responsibility and accountability.[157] It is common for private, public, and hybrid actors to be present, with relationships that are interlinked in multiple layers of contractual obligations, agreements, and understandings. Second, the *lex sportiva* and the associated transnational regulatory regime for sports create a novel and unfamiliar relationship between nation-states and the nongovernmental sector. While this type of relationship has been going on for a considerable duration, the increased globalization and the effects of the information technology age have brought the entire catalog of the effects of MSEs to the limelight.[158] By co-opting nation-states to facilitate the successful hosting of MSEs, SGBs such as FIFA and the IOC, which are private sector entities, have brought a reverse-role situation. Windholz terms it "the increased publicization of the private," through public-private

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[154] Nichols & Ralston, *supra* note 149, at 4–6.

[155] Eric L. Windholz, International Sports Transnational Legal and Regulatory Order: Quintessential Regulatory Capitalism, 1 BOND U. SPORTS L. & GOVERNANCE J. 1, 15 (2022).

[156] See generally Wenjun Yan, Establishment of International Sports Arbitration System in China: Realistic Needs, Conditions and Specific Paths, 12 CHINESE STUD. 35 (2023).

[157] McGillivray et al., *supra* note 77, at 180–83.

[158] *See generally* David Levi-Faur, *The Global Diffusion of Regulatory Capitalism*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 12 (2005).

partnerships, rather than the more widely recognized public-private partnerships.[159] In short, SGBs wield significant regulatory power by reason of contract—contracts with host states in this context—whereas states are happy to decrease their own regulatory authority in favor of those contracted out to SGBs. Even if this arrangement is financially and politically beneficial for states, it comes at a cost for constitutionally entrenched rights because SGBs are contractually immune from any liability toward persons or entities that suffer harm from their actions.

CONCLUSION

This Article has demonstrated that major SGBs have managed to achieve asymmetry in their favor when negotiating with states to host MSEs. Upon a successful bid leading to the conferral of the event to a host state, the state has little to no power to negotiate the terms of the agreement, and the host state must accept all terms and conditions therein, including the rules and regulations of the SGB in question. In such agreements, the SGB delegates all the functions of the project to a local entity of the host state, and both the host state and such entity are liable fully for any contractual or tort-based claim arising directly or indirectly from the event. One may well posit that since full responsibility is acknowledged by at least two entities (for example, the local organizing committee and the host state), there may be no need to further implicate the SGB under whose authority the MSE is organized. The reason is largely of practical significance. Since SGBs have negotiating power over host states, it follows that they can draft HCCs that allow human rights claims by injured parties to be expeditiously and efficiently resolved by impartial arbitral or judicial mechanisms. This may extend to all cases where the host violated human rights in pursuit of its MSE obligations, including destruction of private properties, unlawful evictions, violence against protestors, and others. SGBs choose not to insert pertinent provisions in HCCs and instead rely on the ordinary civil procedure rules in the host country to tackle human rights claims, even if they know very well that the prospect of justice is minimal.

Moreover, given that host states are lawmakers, they possess the authority to draft laws that limit not only access to suitable remedies but also laws that limit the extent of their own liability to claims for damages by injured parties such as construction workers and Indigenous

[159] Windholz, *supra* note 155, at 12–14.

communities. Therefore, a large number of potential claimants may fall through the cracks of justice unless SGBs force natural justice principles on host states, which is clearly within their negotiating prowess. Where they fail to do so, it is just for these claimants to seek appropriate remedies from the SGB. Practice has shown, as in the case of Qatar's hosting of the 2022 FIFA World Cup, that when pressured, many states are willing not only to change poor practices but also to embrace such changes as part of their legacy. 160 It is for all these reasons that it is imperative for justice mechanisms in MSEs to reflect the shared responsibility of all stakeholders and not just those reflected in HCCs.

This Article has argued that in order to defuse politics from accountability in the course of an MSE, it might be worthwhile for stakeholders to consider the use of specialized arbitration, tailored to the event in question and to multi-party claims. 161 Although arbitration is generally considered a poor option in labor disputes in Europe, it has gained traction in the United States when cases involve mass claims—and unions—because the parties are capable of arm's-length proceedings. A standing tribunal with standby arbitrators, composed of both human rights experts as well as business lawyers, is an attractive proposition because it allows for an impartial assessment of claims that would ordinarily befall the local courts (assuming they are even willing to assume jurisdiction) with lengthy proceedings and little prospect for success. Arbitral proceedings, or even expert determinations, would be expeditious, timely, and imposed by contract on both the host state and the variety of stakeholders. FIFA should further consider strengthening the human rights obligations it imposes in its contractual arrangements with host states. In addition to more effective policing and prosecution of crimes and torts, it is worthwhile to institute

[160] *See generally* Ilias Bantekas, *Rapid Social Transformation Through Mega-Sporting Construction*, 52 FORDHAM URB. L.J. 755 (2025) (arguing that the unprecedented changes to Qatar's labor laws were embraced by its people as a sign of progress and legacy-building, which persisted after the end of the World Cup).

[161] *See* Ilias Bantekas & Michael Stein, *Why Arbitration in Business and Human Rights Disputes Enhances Labor Rights*, FIFTEEN EIGHTY FOUR (Sept. 8, 2021), https://cambridgeblog.org/2021/09/why-arbitration-in-business-and-human-rights-disputes-enhances-labor-rights [https://perma.cc/3MRL-GB6B]. Parallels have been drawn with the adjudication of cultural heritage and art as a matter of self-determination. *See* Eleni Polymenopoulou, *Indigenous Cultural Heritage and Artistic Expression: "Localizing" Intellectual Property Rights and UNESCO Claims*, 6 CAN. J. HUM. RTS. 87, 96–98 (2017). *See also* Eleni Polymenopoulou, "*Cultural Diversity" from the Perspective of Human Rights, Media, and Trade Law: Cross-Fertilization or Conflict?*, 7 SANTANDER ART & CULTURE L. REV. 123, 136 (2021).

an auditing mechanism for contracts and subcontractors, through which fundamental aspects of workers' rights are protected and enforced, including health and safety, payment of wages and compensation, and others. HRIA clauses would go a long way toward achieving this end. Contractors, subcontractors, and state instrumentalities should enforce fundamental rights through their own internal mechanisms in the first instance, but independent auditors should also be accessible to workers and other stakeholders, and such auditors must possess sufficient authority to bring these claims to the courts or arbitral tribunals.