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An Olympic embrace? A critical evaluation of the IOC's commitment to human rights

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ABSTRACT

The intersection of sport and human rights has demonstrated that the actions of global sport mega-event franchise owners can now no longer be viewed as impervious to wider human rights considerations. In examining recent operational developments undertaken by the International Olympic Committee (IOC), as evidenced by their institutional embrace of international human rights standards, this article cautions against an uncritical acclaim of such developments. By drawing upon legal texts, the extant literature on the overlap of both sport and human rights law, and Foucault's governmentality theory, it argues that whilst the IOC's embrace of human rights remains a positive development, their ongoing application of the 'clean venue' principle on Olympic Host Cities remains problematic for two key reasons. It argues, first, that the 'clean venue' principle can be understood as a governmental technique that disciplines and controls Olympic spaces, and those who fall within the regulatory, legal, and operational reach of the principle itself, whilst preserving the existing political economy in which the Olympics are embedded within. Secondly, it argues that as an inescapable expression of the IOC's commercial and contractual control, the 'clean venue' principle raises additional human rights concerns which impact upon various rights such as freedom of assembly and expression and the rights of local communities within and around Olympic and 'non-Olympic' spaces. Ultimately, this article contends that while the IOC's recent operational developments are to be welcomed, much work remains to ensure that human rights law is more visibly foregrounded within the IOC's legal framework.

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Introduction

The interface of sport and human rights has generated significant scholarly attention in recent years (Horne 2018, McGillivray *et al*. 2019). One clear strand which has emanated from such academic scrutiny has been the clear repositioning of the roles and responsibilities of the private sector in relation to upholding internationally protected human rights law (Byrne and Lee Ludvigsen, 2023). The legal and practical corollary of this has seen the archetypical state-centric model of human rights protection yielding to a more expansive and nuanced understanding of the role and reach of the private sector in both contributing to, and ameliorating, human rights abuses (Deva and Bilchitz 2013, Bilchitz 2021). Within such parameters, the responsibilities of sport-mega event organisers have also come under increased scrutiny. Accelerated by the promulgation of the 'UN Guiding Principles on Business and Human Rights' (United

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Nations 2011), commonly referred to as the 'Ruggie principles', the activities, and responsibilities of the private sector, are now subject to more rigorous human rights scrutiny. This has been further invigorated by the ongoing supranational efforts to conclude an internationally binding treaty on business and human rights (United Nations 2021). This also has enormous practical, operational, and legal repercussions for sport mega-event (SME) organisers and franchise owners, as irrespective of their size or commercial objectives, it is now widely accepted that businesses retain 'the obligation to respect internationally recognized human rights' (ibid.).

Crucially, for this article, this also extends to sport governing bodies, including the International Olympic Committee (IOC) which, owing to their transnational commercial, political, and financial capital, have been considered too powerful to be regarded as beyond reproach in terms of their actions and views (Næss 2020, p. 205). Indeed, the burgeoning literature on the intersection of sport and human rights generally (Giulianotti and McArdle 2014, Horne 2018), and the explicit responsibilities which sport governing bodies (should) assume in respecting human rights specifically (McGillivray *et al*. 2019), is typified by the core contention that the behaviour of sport governing bodies is not immune from interrogation *vis-à-vis* their human rights obligations.

Against this backdrop, this article, in adopting a conceptual stance, frames insights from the existing literature and examines recent operational developments undertaken by the IOC which signify a more visible embrace of human rights. It argues that, while such progress is necessary and welcome, the activities of the IOC, including the manner in which the Olympic Games are awarded and hosted, are still largely underpinned by the IOC's overarching commitment to the neoliberal ideals of profit, market dominance, and financial self-preservation (Boykoff 2013). This argument, however, further possesses a theoretical dimension. Specifically, we seek to adapt and extend Foucault's (1977) governmentality theory which highlights how various social and political actors and institutions – including the IOC – increasingly exercise and express their power through the regulation of the 'conduct of conduct', which not solely relies on direct, but rather on *indirect* techniques to control and govern populations' behaviour and movements. For Foucault, governmentality replaced earlier and more 'sovereign' expressions of power. Rose (1996, p. 328) defined governmentality as 'the deliberations, strategies, tactics and devices employed by authorities for making up and acting upon a population and its constituents to ensure good and avert ill', while Siltaoja *et al*. (2015, p. 448) argue that governmentality is often invoked to explain 'how power and power relations usually work in liberal democratic political regimes'. Through this lens, this article therefore adopts a Foucauldian approach to critically interrogate the IOC's 'clean venue' principle as one governmental technique that seeks to conserve the Olympics' political economy, whilst simultaneously governing its commodified spaces.

Thus, this article argues that the IOC's seemingly intractable adherence to its 'clean venue' principle, itself an inescapable expression of the organisation's commercial and contractual control, brings into sharp focus wider human rights such as freedom of assembly, expression, and the rights of local communities who find themselves thrust into the shadows of the Olympic spectacle. It is further argued that the consequences which arise from the rigid application of that principle possess the capacity to undermine, if not totally negate, these wider human rights. This consequently challenges the IOC's professed organisational commitment to such rights. Importantly, further, is that we contend that the impact of the 'clean venue' principle should not be viewed as exerting an equivalent or linear impact on those who fall within its ambit. Rather, its effect on distinct population groups underscores the wider need to critically examine the differential effect which the principle exerts. As argued elsewhere, the impact of the Olympics on children and young people for instance, warrants increased scholarly attention (Byrne and Lee Ludvigsen, 2022).

In its most reductive form, the 'clean venue' principle ensures that all Olympic venues, both competitive and non-competitive, are free of any commercial, religious, and/or political advertising or messaging. This is enshrined within Rule 50 of the Olympic Charter and further contained within the IOC (International Olympic Committee) (2018) '*Olympic Host City Contract – Operational Requirements*'. For example, adherence to the principle is resolutely enshrined within the contractual arrangements between the IOC and the City of Paris, in preparation for the forthcoming Paris 2024

Olympics (IOC 2017, Clause 23). Yet, as we contend, it is the application of this principle that raises more human rights questions than it resolves, especially for the human rights of those who may find themselves caught within its operational and legal reach.

Building upon the existing literature on the overlay of human rights and SMEs (e.g., Horne 2018, Talbot 2023), particularly the scholarship surrounding the IOC, this article explores whether the recent institutional commitments undertaken by the IOC go far enough to truly embed respect for human rights within its multi-layered governance structures. In offering a critical evaluation of the IOC's turn to human rights, this article argues that although such developments indicate a positive direction of travel, significant work remains to be done to ensure that human rights are more visibly embedded within the legal, contractual, and operational arrangements which typify the IOC's engagement with (prospective) Host Cities in the lead up to the hosting of an Olympiad. Ultimately, it concludes that the IOC's current approach towards upholding the 'clean venue' principle entrenches an organisational dichotomy within the IOC itself, the result of which ensures that any institutional allegiance to human rights is inevitably rendered secondary to their commercial self-protection.

Context: sport and human rights law

This section contextualises the relationship between sport and human rights whilst discussing how the IOC – the Olympics' franchise owner – has increasingly embraced human rights rhetoric and attempted to reflect this in their policies. Before examining the specific human rights policies of the IOC, itself, it is first necessary to understand the wider legal and political context against which the ascendancy of interest in the overlap of sport and human rights has ultimately emanated from (Kidd and Donnelly 2000, Donnelly 2008, Giulianotti and McArdle 2014). It is contended here that three primary, yet intersecting factors, emerge when one considers such an overlap. The first of these involves an understanding of the legal contours of the human right to sport itself and the obligations this imposes on contracting states in terms of complying with their legal obligations. The second theme pertains to the obligations which human rights law imposes on non-state and private entities including, for present purposes, those which fall upon mega-events' governing bodies, including the IOC (Byrne and Lee Ludvigsen, 2023; Deva and Bilchitz 2013). The third consideration relates to the commercial activities of private operators themselves, including the IOC, and the compatibility of their actions with international human rights law (Shiner 2004; James and Osborn, 2012a). Unpacking how these three distinct, yet often intertwining legal considerations influence each other, is therefore fundamental to understanding the complex, challenging, and arguably contradictory multi-layered legal framework which typifies the intersection of sport and human rights. This is necessary to accurately demarcate the roles, duties, and responsibilities of the various state and non-state actors situated within the wider discourses surrounding the Olympic Games.

The human right to sport

From the outset, this article proceeds on the basis that a clear human right to sport exists and that such a right can be extrapolated either from the text of existing international human rights treaties, and further as a derivative and necessary right underpinning the enjoyment of other human rights, such as the right to health and education. Even though Veal (2023p. 144) frankly reminds us that the idea of 'sport as a human right is relatively neglected in the academic literature on sport', an examination of the right to sport itself is necessary to fully understand the obligations of SME franchise owners, including the IOC, in relation to their wider obligation to respect human rights. And although the Olympic Charter proclaims that: 'The Practice of Sport is a human right' (2021, p. 8), it is however bereft of the legal traction which directly flows from legally recognised international human rights law. However, it is in the context of the IOC's own statement concerning sport and human rights that an adverse legal paradox arises. On the one hand, the IOC is happy to assert the

inseparability of sport and human rights, but on the other hand, and as this article will argue, their absolute commitment to the 'clean-venue' principle, impacts and undermines several important and connected human rights.

In their analysis of the historical evolution of the Olympic Charter, Dos Santos *et al*. (2021, p. 562) argue that its development has been reactionary in nature and typified in large part by external stakeholder requirements and the 'urban strategies of the hosts' (ibid.). Writing in the 1980s, Vedder (1984, p. 240) argued that it lacked 'legal clarity and consistency' and was 'not even a coherent statute, but simply a collection of various texts'. Similarly, Duval (2018, p. 147) noted that although the Charter is an 'evolving document', its indispensability within the Olympic movement suggests that it provides constitutional credence, although imperfect in nature, to the transitional structure of the Olympic movement itself (p. 266). However, beyond the discourses pertaining to the precise legal status of the Olympic Charter, what is clear is that it exerts immense political and persuasive significance and underpins the contractual and legal arrangements which persist between the IOC and prospective Host Cities upon the receipt of Olympic hosting rights.

Whilst the Universal Declaration of Human Rights (UDHR) (1948) represents the foundational legal bedrock of modern human rights law and has subsequently impacted the development of sport and human rights (Giulianotti 2004), it is itself, however, silent on the *right to sport*. However, subsequent international human rights treaties and supranational declarations have solidified the significance of sport within international social, legal, and political discourses. For example, Article 31 of the United Nations Convention on the Rights of the Child ('CRC') (1989) which guarantees the child's right to rest, leisure, play, recreational activities, cultural life and the arts – though also silent on the issue of sport – has been interpreted by the UN Committee on the Rights of the Child, the monitoring body for the CRC, as enshrining, *inter alia*¸ access to sport and sporting facilities (UN Committee on the Rights of the Child (CRC) 2013). Similarly, Article 30(5) of the UN Convention on the Rights of Persons with Disabilities (2007) enshrines the right of persons with disabilities to 'participate on an equal basis with others in recreational, leisure and sporting activities', while Article 13 of the UN Convention on the Elimination of Discrimination Against Women (CEDAW) (1979) guarantees the equal right of woman and girls to sports participation in a comparable manner to boys and men.

Equally, in concert with the longstanding appreciation of the duties which flow from internationally protected human rights (Alston and Quinn 1987), the right to sport imposes a duty to protect, respect, and fulfil on contracting states. In her summation of this tripartite legal framework, the UN Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health, stated that the duty to protect requires states to:

> [E]nsure full compatibility between sport policies, rules, programmes and practices, and human rights law, and should intensify their efforts to *prevent systemic and ad hoc rights violations perpetrated by third parties* (2016, p. 7, emphasis added)

The reference to third parties in this context is significant because human rights law has long recognised the need for states to effectively monitor and legislate the actions of non-state and private actors, including the IOC, to ensure that they comply with internationally protected human rights law (UN Committee on the Rights of the Child (CRC) 2013, UN Committee on Economic, Social and Cultural Rights, 2017).

While further stating that the duty to respect predominantly involves a negative obligation on the part of the state to refrain from interfering with individuals' rights to equal and non-discriminatory access to sporting facilities, it is under the duty to fulfil that the obligations of the state come under increased attention. This is because it activates the duty of positive obligations, given that classical policies of state non-interference will not satisfy such an obligation (Fredman 2008). Developed as a mechanism to militate against the direct or indirect diminution of the legal and practical scope of internationally protected human rights, the doctrine of positive obligations requires states to take action to ensure the enjoyment of the particular human right(s) in question (Mowbray 2004, Stoyanova 2018). As Borelli (2006, p. 101) states '[t]he recognition of a duty incumbent upon states

"to take action" is, at base, the common denominator of all understandings of the notion of positive obligations'. Moreover, within a sport-specific context, it requires states to 'take action to ensure that sufficient resources and infrastructure are devoted to enabling people to access and participate in sport and physical activity' (United Nations 2016, p. 8).

At the international governmental level, the UN 2030 Agenda which comprises 17 internationally agreed-upon Sustainable Development Goals (SGDs) and 169 targets further highlight the cross-cutting legal and political significance which sport assumes (Lindsey and Chapman 2017). As the United Nations (2015, para. 37) outlines:

> Sport is also an important enabler of sustainable development. We recognize the growing contribution of sport to the realization of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion objectives.

Thus, a clear extrapolation can be made from the foregoing that international human rights law undoubtedly enshrines a right to sport. Additionally, this right is further protected derivatively as an essential component of other human rights including health and education. From a children's rights perspective, the UN Committee on the Rights of the Child (CRC) (2013, para 59) has stated in the context of children's health rights that children and young people require information and education on all aspects of their health, including sports and recreation 'to enable them to make informed choices in relation to their lifestyle and access to health services'. Additionally, from an educational perspective, evidence has long supported the contention that physical education (PE) is an essential component to children's health, education, and overall well-being, thereby underpinning the wider inter-related nature of the rights to health, education and sport (Bailey *et al*. 2009, Öhman and Quennerstedt 2017).

It is therefore axiomatic that a human right to sport exists within the legal and lexical make-up of international human rights law. While this places clear legal obligations on the state in terms of fulfiling their obligations to comply with the right to sport, it also raises additional questions about the role, reach, and responsibility of mega-event franchise owners concerning their adherence to the human right to sport.

The human rights obligations of SME franchise owners

This section examines the increasing attention which the overlap of human rights and sport has attracted from the perspective of SME franchise owners. The first aspect of this examination will scrutinise the expanding legal discourses surrounding the human rights obligations that SME organisations (should) assume. It argues that, despite their non-state character, such organisations, including the IOC, can no longer be viewed as resistant to the various human rights concerns, and indeed, obligations, that arise within a sporting context (see Byrne and Lee Ludvigsen, 2023). The second aspect of this examination focuses on the specific human rights concerns that arise within a hosting context and argues that much scholarly work remains to be done from the perspective of the IOC in view of the various concerns that have thus far arisen within the literature with respect to their adherence to internationally protected human rights. Specifically, it is argued that although the current actions and policies of the IOC undoubtedly signify a more observable commitment to human rights protection, a deeper excavation of that organisational intent reveals a clear institutional allegiance to the IOC's commercial self-interest, as evidenced through the 'clean-venue' principle.

Firstly, international efforts are clearly gathering pace in relation to the formalisation of an international-binding treaty on the human rights obligations of the private sector (De Schutter 2016). Macchi (2018, p. 83) argues that such a treaty would possess 'an expressive value and contribute to the development of international customary law, as well as influence developments at the national level'. This is especially pertinent with regard to the IOC, which, owing to its supra-national status and influence has been described, *inter alia*, as a transinational organisation

(Herguner 2012), a 'multi-national, multisport organization' (Arai-Takahashi 2013, p. 1113) and one which 'occupies a place in international society that straddles public and private, governmental and non-governmental' (Nelson and Cottrell 2016, p. 441). Conversely, however, it has been maintained that the IOC operates within an accountability vacuum, such that its NGO status 'insulates it from the supervisory, fiscal, and peer accountability mechanisms that would typically accompany this position' (ibid).

Notwithstanding the absence of an international treaty, it is the aforementioned 'Ruggie principles' that have become *the* most authoritative guide to be consulted for issues concerning the interface of businesses and human rights (Byrne and Lee Ludvigsen, 2023). Whereas these principles have been examined elsewhere within the academic literature (Wettstein 2015, Glinski 2017), it is the articulation within the 'Ruggie principles' of the 'Corporate Duty to Respect Human Rights' that is of relevance with regard to the actions of the IOC. Central to this duty is the fundamental premise that the private sector should respect human rights within their organisational objectives. This subsequently mandates them to engage in human rights due diligence processes to identify, pre-empt, and mitigate any adverse human rights consequences arising from their activities (United Nations 2011). And although 'the only manner of holding private actors to account in international law is via attribution of the offending conduct to a State' (McConnell 2017, p. 152), the growing recognition of the human rights duties of the private sector amplifies the discursive and legal parameters in which those duties – including those of the IOC – are now situated. Therefore, against this evolving legal context, the actions of the IOC can no longer be viewed as detached uncontroversial commercial decisions. Rather, their unique status brings their choices squarely within human rights confines.

Secondly, the overlap of sport and human rights also shines a prominent spotlight on the internal organisational decisions and policies of the IOC. This further illuminates the extent of their genuine commitment to human rights in the first instance. Undeniably, recent policies implemented by the IOC indicate a clear directional turn towards a more robust adherence to internationally protected human rights norms. This includes the adoption of the recommendations advanced in 2020 by Al Hussein and Davis (2020) in support of the development of an IOC Human Rights Strategy, and the espousal of the Olympic Agenda 2020 + 5 (Thorpe and B 2019, Nicoliello 2021), which contains a clear commitment to embed human rights within the Olympic Charter itself. Specifically, Recommendation 13 which contains a pledge to amend the Charter 'to better articulate human rights responsibilities' (IOC (International Olympic Committee)2020; Recommendation 13) and to better support the IOC's organisational 'internal capacity with regard to human rights' (ibid.) signify a welcome intent.

Moreover, Chappelet (2021) reminds us that the introduction of changes (in 2017) to the contractual arrangements between the IOC and prospective Olympic Host Cities, within Host City Contracts (HCC), now centralise respect for human rights within Olympic Hosting arrangements. Article 13 HCC now places stricter conditions upon host cities concerning the prohibition of discrimination, the protection of human rights, and ensuring that human rights violations are remedied in line with international law as well as internationally recognised human rights standards (i.e., the 'Ruggie principles'). However, Grell (2018) argues that despite such changes and commitments within HCC's, 'the core human rights provision fails to specify which human rights the Host City, the Host NOC and the OCOG should respect and protect'. This in turn creates an accountability gap in that while respect for human rights is outwardly documented, the wording and content of the exact nature of what human rights should be protected is curiously omitted. This is relevant as human rights obligations impose distinct duties on distinct population groups. For example, children and young people have specific human rights under the CRC, the satisfaction of which, by both state and non-state actors, require child-specific and child-friendly approaches (Lundy *et al*. 2013).

Moreover, whilst the commitment to human rights is welcome, such developments do little to displace or dilute the commercial supremacy which the IOC entrenches within its contractual arrangements with (prospective) Olympic Host Cities. This is habitually reinforced through the

enactment of detailed SME-specific domestic legislation, which rigidly protects the Olympic brand, and indeed the 'clean venue' principle (James and Osborn, 2012). As Grady (2020, p. 131) presents:

> Allusions to event-specific legislation to ensure adequate protection of Olympic marks, symbols, and phrases are now included in every Olympic host city contract and local organizing committees are keenly aware of Olympic expectations in this regard.

Therefore, the longstanding embrace of commercialisation (Séguin and O'Reilly 2008), in addition to the IOC's desire to prevent 'ambush marketing' and its associated 'clean venue' principle – which prohibits demonstrations or protests (IOC (International Olympic Committee) 2021: Rule 50) not merely within and around official Olympic sites but also 'other areas' (ibid.) – raises a number of profound human rights concerns. Chief among these is the impact which these policies, and indeed their enabling legislation which now underpin Host Cities hosting obligations, exert on wider human rights such as the right to protest, freedom of expression and assembly, amongst others. This extends not only to those participating in, or attending the Olympic Games, but also the wider ripple effect such policies have on what the IOC have called, 'other areas' (IOC, 2021; Rule 50(2)). Without demarcating the legal and/or geographical boundaries of these areas, the impact of the 'clean-venue' principle contains potentially far-reaching consequences. While these concerns are addressed below, it is thus crucial to caution against an uncritical welcome of the IOC's current human rights policies.

Moreover, concern for human rights has long followed mega-events, their owners, and organisers. For decades, mega-events' hosting rights have been pursued by states seeking to capitalise on these events' political, symbolic, cultural and (potential) financial significance (Roche 2000). In recent years, the staging of mega-events has also been considered by some states as a strategic tool assisting the acquisition of 'soft power' on the global scene (Brannagan and Rookwood, 2016). Thus, importantly, as the stakes associated with mega-events have grown, so has 'revelations of corruption and lack of good governance been plentiful' (Næss 2020b: 975). Consequently, in the constantly expanding literature on sport mega-events, the multiplex relationship between mega-events and human rights – as well as events' negative impacts – have been increasingly appreciated in critical analyses (Lenskyj 2014, Horne 2018, McGillivray *et al*. 2019, Chappelet 2021, Talbot 2023). Indeed, this may be viewed in the context of intensified public discourses around 'sports washing' (Næss 2020), and the increased calls for reform from civil society groups (Talbot 2023), as well as several controversies that have received vast media attention such as human rights breaches associated with the organisation, preparation, and hosting of specific mega-events (Millward 2017, Horne 2018). Whereas an extensive appraisal of the ensuing literature is beyond this section's scope (see McGillivray *et al*. 2022), researchers have, to date, examined various facets of the human rights/mega-event pairing.

On the overlap of the Olympics and human rights, Chappelet provides a breakdown of four epochs in which the Olympics' relationship with human rights can be divided into. These include (1) the Olympics of 1936, (2) the Games of 1960s and 1970, (3) the Olympics in China (2008, 2014, 2022) and (4) future editions of the Olympics (from 2024 onwards). In doing so, he observes how this initially narrow relationship has evolved in line with broader societal conceptions of human rights. Similarly, Gauthier and Alford (2019) also question the position of the IOC within the emerging human rights concerns and trace IOC's reforms and legitimacy *vis-à-vis* human rights. Meanwhile, Talbot's (2023) recent study also provides a coherent understanding of the IOC's human rights policy reforms and directions under current IOC president Thomas Bach, while other scholars have explored the connections between Olympic-related gentrification, including the eviction or exclusion of residents (Kennelly 2016, Suzuki *et al*. 2018). More widely, the connections between mega-events' intensified security complexes and policing and human rights have also been subjected to analysis (Giulianotti *et al*. 2015), whilst additional work considers the emergence and roles of advocacy organisations (McGillivray *et al*. 2022), protestors, and activists seeking to influence the governance structures of mega-events (Boykoff 2020, Talbot 2023). Whereas such scholarship has successfully

managed to draw much-needed attention to the 'potentially negative, exclusionary and rights-infringing nature of sport' (McGillivray *et al*. 2019, p. 185), it remains crucial for scholars to critically attend to the broader human rights concerns which are inseparable from the hosting of mega-events themselves. As such, whilst the Olympic *embrace* of human rights is clear from the IOC's recent rhetoric and policies, much scope remains for an even deeper analysis of the IOC's commercial self-interest, how it is sustained and, finally, how this intersects with its human rights commitments.

The IOC's commercial activities and human rights

Whilst the preceding sections have focused on the right to sport itself and the increasing human rights obligations which SME franchise owners are now increasingly seen as possessing, this section drills down deeper into the legal architecture which underpins the IOC's legal and contractual arrangements with host cities in advance of the staging of the Olympic Games themselves. Specifically, we argue that these arrangements are not only designed to solidify the IOC's commercial self-interest but possess the broader capacity to exert a disproportionate impact on wider human rights considerations. These include the rights to protest, freedom of expression and assembly, and the rights of indigenous communities and businesses who for no other reason other than geographical coincidence, find themselves proximate to Olympic venues. In view further of the IOC's corporate duty to respect human rights, as outlined within the 'Ruggie Principles' (United Nations 2011), it is further argued that such arrangements are inconsistent with the IOC's wider obligations to respect all human rights.

Firstly, situated right across the literature examining the intersection of the IOC and the manner in which the Olympic Games are hosted, both in the preparatory pre-hosting stages and the domestic legislative enactments which typically accompany the staging of the Games in a given Host City, is the recognition of a deep-seated and often weighted bias towards the commercial interests of the IOC (Louw 2012; James and Osborn, 2012b, Boykoff 2013, Nelson and Cottrell 2016, Grady 2020). Indeed, as Smart (2018, p. 144) frankly surmises, the evolution of the Olympics in the twentieth century was decidedly marked by the 'emergence of a global sport consumer market and … the increasing involvement of commercial corporations', while McGillivray *et al*. (2020, p. 281) argue that the IOC 'operates as a multinational corporation keen to strike the right deal with its main partners to ensure its continuing profitability'. In many ways, this has assisted the IOC's growing revenues from broadcasting, sponsorship programmes and ticketing (for example, between 2013 and 2016, the IOC generated US$7.798 million in revenue, see De Oliveira, 2020, p. 56). Hence, much recognised in the literature is the near unanimous acceptance of the wholesale commercialisation of the Olympic enterprise itself (Boykoff 2011, Osborn and Smith 2015, Smart 2018), and the transformation of the IOC into what Nelson and Cottrell (2016, p. 11) label as 'a decidedly capitalist organization'.

Notwithstanding this, upon examining the IOC's embrace of commercialism, several profound issues abound. Among these is the extent to which the IOC's outward commitment to human rights can be reconciled with their commercial interests and the manner in which the latter objective arguably constrains and contradicts the former. Indeed, an examination of the IOC's documentation is revelatory of the depth and breadth of their commitment to their commercial safeguarding. As previously stated, Rule 50 of the Olympic Charter – which encases the 'clean-venue' principle' prohibits any form of political, religious, or commercial messaging or advertising (IOC, 2021). The justificatory basis of this proscription rests on the argument that the Olympic Games remain apolitical and 'a celebration of sporting talent and competition that is untainted by commercial imperatives and financial reward' (James and Osborn, 2012a, p. 424). However, if, as recounted by Das (2015, p. 1), that Foucault's governmentality theory can be 'understood in the broad sense of techniques and procedures for directing human behaviour', or what Mach and Ponting (2018, p. 1848) categorise as representing 'the mechanisms of

power that "conduct the conduct" of individuals in society', then the 'clean-venue' principle, and its clear prohibitionary effects, is tantamount to one such behavioural method.

Notably however, the clean venue principle (IOC, 2021; Rule 50(2)) extends not only to Olympic venues and sites, but also to 'other areas' (ibid.) without delimiting these areas' scope. Additionally, the IOC's *Host City Contract Operational Requirements* further elaborates the extent of this prohibited conduct (IOC (International Olympic Committee) 2018), which includes any advertising or messaging 'within the view of the television cameras covering the sports at the Games or the Ceremonies or of the spectators watching such sports or Ceremonies' (ibid., p. 139). While the conceptual genesis of the 'clean venue' principle may derive from the organisation's perceived apolitical status and its belief that it is 'strictly politically neutral at all times' (Bruton, 2020), it has been cogently argued elsewhere that such political detachment is impossible to rationalise or achieve (Næss 2018).

However, the application of the 'clean venue' principle is overtly problematic in view of the IOC's clear alignment within its Charter of the organisation's commitment to human rights, in addition to its overarching corporate duty to respect human rights (United Nations 2011). In its current iteration, the contours of the principle are legally unclear which generates wider human rights concerns. Several questions arise: What are the limits and scope of these so-called 'other areas' referred to within Rule 50(2) of the 'clean venue' principle? How are the human rights of those who may be caught within those areas protected? What steps have the IOC taken to ensure that the rights of those people will be protected before, during, and after an Olympic edition? And moreover, does the IOC's contractual and operational documentation contain sufficient procedural safeguards to ensure the protection of such rights? We contend that such questions, although inexhaustive, provide a snapshot of the contradictions and tensions which characterise the IOC's current engagement with existing and future Host Cities. Such questions assume increased significance in view of the evidence that in preparation of an Olympiad, cities have previously engaged in 'clean up' operations which have involved the displacement of local populations in preparation for the Olympic Games (Kennelly 2016, Smart 2018). Indeed, in their analysis of the run-up to the London 2012 Olympic and Paralympic Games, James and Osborn (2012a) provide an in-depth examination of the domestic legislation which was enacted in readiness for the London 2012 Olympics. In noting that the underlying aims of the legislation was to protect the Olympic brand, including the IOC's 'clean venue' principle, they observe that the legislation was so extensive and aggressive in its scope, that it surpassed what was legislatively necessary to protect 'the commercial interests vested in the Olympic Games" (p.427) and went "far beyond that which has been granted to any other event or commercial undertaking' (ibid). Furthermore, Nelson and Cottrell (2016, p. 447) remind us that the 'IOC also makes host cities police Olympics-related intellectual property rights', while in recognition of the advent of the enactment of such event-specific legislation, Grady (2020) astutely posits whether: 'host nations can muster support for such one-sided legislation that benefits a private enterprise and global elite brands at the expense of local businesses in some cases'.

Thus, in view of the foregoing analysis, it is clear that the overlap of *sport* and *human rights* exists within a complex and contradictory multi-layered legal framework, which encases the roles of both state and non-state actors. While much attention has been allotted to the increasing overlap of the human rights obligations that SME organisations should assume, much work remains to be done to further delineate and develop the distinct human rights obligations that these organisations possess, and further how they can give effect to the human rights of others who may be impacted by their activities. The following section examines the IOC's adherence to the 'clean venue' principle. It argues that its current application possesses the capacity to compromise the human rights of others, and, in line the UN 'Ruggie Principles', that the IOC should build in more robust procedural safeguards to mitigate against such potentially adverse impacts.

The IOC's 'clean venue' principle and the corporate duty to respect human rights

The 'clean venue' principle represents one of the IOC's most powerful tools within its legal and contractual arsenal to maintain the commercial self-interest of the Olympics and the market dominance of their official sponsors, otherwise known as The Olympic Sponsors (TOP). Such partners typically represent powerful and influential multi-national corporations and have previously included McDonalds and Coca-Cola, amongst others (Robinson and Bauman 2008, Kim 2013).

In making theoretical sense of this principle, we may borrow Foucauldian insights. Following Foucault (1977), disciplinary power techniques targeting populations have increasingly embedded themselves through institutional discourses, practices, and physical structures. In particular, it is possible to critically approach the 'clean venue' principle as a disciplinary control device situated within a wider neoliberal Olympic apparatus (cf. Foucault, 2007). As such, within Olympic spaces, the principle contributes towards the divisions between 'good' and 'bad' circulations and flows, including rival brands, protests, or political messages that are seen to impede the publicly articulated and choreographed version of the Olympics (see Klauser 2010, Fussey 2015).

Yet, the 'clean venue' principle is also one of the most problematic from the perspective of the corporate duty to respect human rights pursuant to the 'Ruggie principles', which have now been unequivocally endorsed by the IOC (2022) itself. Enshrined within Rule 50 of the Olympic Charter (IOC, 2021), the 'clean venue' principle states that:

(1) Except as may be authorised by the IOC Executive Board on an exceptional basis, no form of advertising or other publicity shall be allowed in and above the stadia, venues and other competition areas which are considered as part of the Olympic sites. Commercial installations and advertising signs shall not be allowed in the stadia, venues or other sports grounds.
(2) No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas.

(IOC, 2021)

Fortified further within the HCC Operational Requirements (IOC (International Olympic Committee) 2018), the principle traverses two broad areas. The first within Rule 50(1) prohibits any form of advertising other than that which has been agreed upon by the IOC, while the second area covered within Rule 50(2) prohibits any form of protests or demonstrations of a political, religious, or racial manner.

Given that this paper's focus is on the manner in which the IOC's commercial self-interest outranks the organisations commitment to human rights, our analysis therefore centres on Rule 50(1). However, that is not to say that Rule 50(2) remains unproblematic in practice for it raises several human rights concerns regarding the right to protest and the immense historical, civil, and political significance which attaches to its exercise (Fenwick 1999, Mead 2010).

However, it is arguably Rule 50(1) which has been deployed to fortify the commercial self-interests of the IOC in the context of the hosting of an Olympiad. Upon deeper examination, the rule arguably nullifies the now accepted corporate duty of the IOC to respect human rights (IOC, 2022), including the human rights of those who find themselves subsumed within the Olympic spectacle, either as athletes, consumers, local population groups or indeed, traders operating within and around Olympic venues. Fussey *et al*. (2012) remind us that, in the lead up to the London 2012 Games, for example, numerous societal sectors 'across rural, commercial and residential domains' (p. 269) were gravely impacted by Olympic-related interventions. In quoting Raco and Tunney (2010), they reiterate the findings that 'the Olympics … acted like a tidal wave crashing over local businesses and clearing them away in the first stage of a longer regeneration process' (cited in Fussey *et al*. 2012, p. 269). Additionally, Fussey *et al*. (2012, p. 270) further outline that the London 2012 Olympics involved the clearance of 425 residents from 'the Clays Lane Housing Estate within the main Olympic site'.

From a human rights perspective, this clearly impacts upon the right to housing as enshrined within international human rights law. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (1966) protects the 'right of everyone to an adequate standard of living for himself and his family, including adequate … housing …'. Indeed, recognising in 1997 that forced evictions, which also happen under the guise of 'development and infrastructure projects' (UN Committee on Economic, Social and Cultural Rights, 1997, p. 3), and which arguably includes the London 2012 Olympic-related developments, the UN Committee on Economic, Social and Cultural Rights has highlighted the wider consequential effects of such evictions. They stated that they can

> result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions (UN Committee on Economic 1997, p. 2).

Therefore, taking the right to housing as a singular exemplar, the London 2012 Olympics clearly affected the housing rights of a distinct group of individuals. However, as evidenced from the preceding statement, the violation of one human right often impinges on others, and therefore, the displacement of the residents from the Clays Lane Housing Estate must not be viewed in isolation from their other human rights. As reported in 2008 by one of the affected residents, in the lead up to the London Olympics: 'My feeling is that people were so wrapped up in the Olympics that they felt hostile towards the people who were in the way' (The Guardian, 2008).

Additionally, the 'clean venue' principle, and the manner in which it has been previously been implemented casts a long shadow on the clear absence of procedural human rights protections within the IOC's contractual and legal architecture. Whilst the organisation is undoubtedly transiting through a period of legal change, it is imperative that in its embrace of human rights, it does not adopt an *a-la-carte* approach to human rights protection. In other words, it is not the professed commitment to human rights that should determine their pledge to respect such standards. Rather, it is the substance and content of the rights to which they pledge adherence to, which should guide and frame their actions. Therefore, by adhering to the corporate duty to respect human rights, it must comply fully with all human rights protections, even if such compliance encroaches upon its 'clean venue' principle.

Rule 50(1)

At its core, Rule 50(1) is designed to prevent against ambush marketing; a practice which essentially revolves around the prevention of the unauthorised association of a business or commercial enterprise with a sporting event such as the Olympics, when in fact no such connection exists (Payne 1998, Séguin *et al*. 2005, Chanavat and Desbordes 2014). As James and Osborn (2016a, p. 102) argue, this occurs: 'where an advertiser makes a deliberate and unauthorised association with an event with a view to exploiting the goodwill or wider public interest in it for commercial purposes'. From the IOC's perspective, the prevention of ambush marketing, the result of which allows official Olympic sponsors to reap the financial rewards from their commercial ties with the Games, is a central and rigid element of Olympic planning. Indeed, emanating from the extensive academic literature on the interface of ambush marketing and the IOC is the unequivocal contractual requirement which the IOC imposes on prospective Host Cities to prevent the practice occurring. This is usually effectuated through the enactment of event-specific legislation at the domestic level (Chanavat and Desbordes 2014, Greenfield *et al*. 2012, James and Osborn 2016a, Nakamura 2018). As James and Osborn (2016a, p. 103) write, from the Sydney Olympics in 2000 and onwards, the IOC 'has demanded as a term of the Host City Contract that domestic legislation be enacted that regulates the opportunities for ambush marketing'.

Indeed, the centrality for Host Cities to prevent against ambush marketing is firmly rooted within the IOC's 2018 *Host City Contract Operational Requirements*, which requires, *inter alia*, the enactment of '*comprehensive legislation* in the Host Country that provides appropriate and timely protection

against ambush marketing' (IOC (International Olympic Committee) 2018, p. 134, emphasis added). However, it is the nature of such legislation, coupled with the manner in which it is enforced that raises several human rights concerns. Firstly, as regards the nature of the legislation, an examination of the literature reveals that national governments often introduce extensive and far-reaching legislative measures which transcend the prevention of ambush marketing itself in the first place (James and Osborn, 2012a; James and Osborn 2016a). This raises connected concerns pertaining to the human rights precepts of necessity and proportionality, both of which impose procedural brakes on the ability of States to enact measures, which may disproportionally impact upon the human rights of those within their jurisdiction. Arai-Takahashi (2013, p. 450) argues that the principle of proportionality is used as 'as a yardstick for appraising whether or not the state has overstepped the bounds of its discretion', while Ekins (2014, p. 347) maintains that 'legislators should discipline their lawmaking choices to be proportionate'. Similarly, the necessity principle requires an objective examination of whether the enactment of a legal measure was in fact necessary and usually precedes a determination of whether that measure was in fact proportionate in the first instance (Gerards 2013, Brems and Lavrysen 2015).

Hence, in the context of Olympic planning, one can see how such principles assume increased significance. For instance, prior to the London 2012 Olympics, the London Olympic and Paralympic Games Act (LOPGA) 2006 not only established the Olympic Delivery Authority (ODA), a body corporate specifically designed to deliver the London Olympiad, but also enabled the enactment of regulations to govern, *inter alia*, advertising '*in the vicinity* of the London Olympic Events' (LOPGA, 2006, Section 18(1)) and street trading, also within '*the vicinity*' of Olympic events (emphasis added) (LOGPA, 2006, Section 25 (1)). Given further that the 2012 London Olympics took place across five borough regions in East London (Digby 2008), the enactment of legislation permitting trading and advertising restrictions, across a vast geographical area which also included areas within their 'vicinity' raised wider issues pertaining to the necessity, proportionality and indeed, reasonableness of such measures. Coupled further with the fact that the ODA were bequeathed with vast legislative powers to oversee matters relating to Olympic planning, transport, trading licences, and advertising, amongst others, questions arise as to the underlying motivations for the devolution of such power to a single entity, but also the wider proportionality of such measures, and their impact on the wider general public. As James and Osborn (2016a, p. 416) write:

> No other public body combines the functions of a local council, planning authority, transport executive, trading standards office and police service, yet the ODA has been granted powers similar to those exercised by each of these bodies

Therefore, the failure of the IOC's updated 2018 *Host City Contract Operational Requirements* to refer to such principles represents a glaring human rights omission. Whilst, admittedly, states ultimately retain legislative control over the form and manner of their law-making processes, the IOC's operational guidance on human rights, totalling two pages in its entirety, is comparably brief when compared to the remainder of the guidance, the majority of which details the mechanisms to preserve the IOC's commercial self-interest. While the guidance refers to the 'Ruggie Principles' (IOC (International Olympic Committee) 2018, p. 127) and the need for Host Cities to develop 'a strong human rights strategy based on human rights due diligence' (ibid.), it fails to identify or elaborate on what this entails.

Central to this is the guidance's failure to embed sufficient human rights procedural safeguards within its instructions. For instance, the failure to explicitly mandate Host Cities to carry out human rights impact assessments (HRIAs) to determine the likely human rights consequences of their actions, in recognition of the differential impact which Olympic-related interventions have on various population groups, signifies a procedural shortcoming within the IOC's contractual arrangements. As De Beco (2009, p. 140), outlines, HRIAs be 'understood as the assessment of both the potential human rights impact of future policies and the actual human rights impact of implemented policies in a way ensuring the participation of various actors'. Whilst not a panacea to predict or remedy all negative human rights consequences, they do however provide an objective evidential basis upon which to evaluate

and proceed with proposed legal, regulatory, or administrative measures (Byrne and Lee Ludvigsen, 2023; Byrne and Lee Ludvigsen 2022). Indeed, probing further into the potential of such impact assessments, (prospective) Host Cities should (and could) carry out not just generalised HRIAs, but also more specific and targeted assessments such as children's rights impact assessments (CRIAs) and equality impact assessments (EIAs) to determine the probable consequence of their intended Olympic-related laws and policies on diverse population groups, including children and young people and the disabled to name but a few. Although CRIAs and EIAs fall within the overarching ambit of HRIAs, their distinct focus ensures that the rights of children and young people on the one hand, and the disabled on the other, are adequately considered and given effect too. This is necessary as the IOCs current human rights commitments, are, as Grell (2018) reminds us, somewhat vague in their stipulations.

Moreover, the benefit of such targeted assessments resides in the fact that children's rights law, under the UN Convention on the Rights of the Child (1989), and disability rights law, pursuant to the UN Convention on the Rights of Persons with Disabilities (2006) possess unique idiosyncratic rights-based protections in their own right. Under the former convention, principles such as the best interests of the child (Freeman 2007) and the rights of the child to be heard in matters affecting them (Lundy 2007), amongst others, would form key considerations around which the compatibility of a state's proposed Olympic-related activities would occur. As Byrne and Lundy (2019, 358) remind us, 'most public policies that affect children and young people, whether directly or indirectly, do not reference the CRC; indeed, many will have been designed by officials who have limited or no knowledge of its existence'. Therefore, the need for Host Cities to consider the rights of children and young people pursuant to the CRC becomes apparent. Under the latter convention, principles around inclusivity, non-discrimination, participation, and complying with the obligation to reasonably accommodate those with disabilities (United Nations 2014), amongst others, would again arguably underpin the state's choices regarding their Olympic-related decisions. At their core, these assessments would not only illuminate what procedures, if any, Host Cities would need to undertake to mitigate any adverse human rights impacts, but further reflect, that human rights do not endure within equivalent legal paradigms. Thus, the failure to acknowledge the distinctive nature of human rights law, the effect of which generates discrete legal duties and obligations for states, dilutes the exhaustiveness of the guidance thus far issued by the IOC.

Secondly, the manner in which the legislation is implemented in real, on-the-ground terms, raises further human rights concerns. This is particularly relevant in view of the vast security apparatus which accompanies the hosting of the Olympic spectacle itself (Fussey *et al*. 2012). Indeed, the intersection between security and the IOC's commercial desires, itself illustrated by the 'clean venue' principle, further generates wider human rights concerns. Because the Olympics are considered a key representation of consumer culture, the reinforcing intersections between commercial and security-related forces, relating to what Giulianotti (2011) conceptualises as 'securitized commodification', becomes apparent. Ultimately, as the event owner and organisers seek to construct secure, attractive, and controlled environments in which consumption behaviours can be stimulated (and controlled), assisted by the IOC's protective 'clean venue' guidelines (Boykoff 2011), wider questions that speak to human rights emerge. This becomes apparent when security-policies (in)directly aid the attempts to shield against, or 'design out' undesirable brands, logos, political messages, social groups or behaviours (see Klauser 2010, Kennelly 2016). Indeed, this again reinforces how the 'clean venue' principle may be understood as an exclusionary disciplinary mechanism seeking to preserve the Olympics' political economy, ensuring that these undesirable 'inherent dangers' of the Olympic circulations are 'cancelled out' (cf. Foucault 2007, p. 65).

The failure within the IOC's Operational Guidance to explicitly refer to security concerns within its human rights guidance runs the risk of severing these two important considerations, when both intersect with each other in an undeniable manner. Considering further the rise of private security operators within an SME context (Yu *et al*. 2009; Grix, 2013), the need for more critical engagement with their human rights obligations becomes a source of genuine inquiry. Indeed, before the Sydney 2000 Olympics, Lenskyj (2004, p. 379) observed that the New South Wales Government:

> sprang into action to pass a comprehensive set of regulations controlling public behaviour, and giving police and private security personnel unprecedented powers, all in the name of 'unobtrusive' Olympic security measures

Regarding the overlap between security, branding and the 'clean venue' principle, the UK-based Institute of Human Rights and Business (2017) identifies several human rights challenges which arise within such a context. For example, on the specific issue of security, the Institute of Human Rights and Business (2017: 5) observes that the Paris 2024 bid contained: '[n]o indication of commitments to international standards on the use of force, or to community policing that does not unfairly target certain racial/religious/ethnic groups". Therefore, the need to subject future Olympic Host Cities to robust human rights oversight regarding their proposed security arrangements becomes a clear concern. In addition, the IOC's Operational Guidance should impose clear obligations on Host Cities to carry out human rights impact assessments in relation to their proposed security protocols.

Conclusion

The Olympic industry has a complex relationship with human rights. Recently, Boykoff (2019, p. 1) submitted that the current era is 'an enormously important moment when it comes to the relationship between the Olympics Games and human rights' as he urged scholars to 'peer behind the shiny scrim of the Olympics and seriously scrutinize the effects that staging the Games has on host cities'. In the present-day Olympic (and wider mega-event) context, and as this article demonstrated, it remains critical that 'human rights' are not reduced into 'pure sentimentalism, empty rhetoric, and anodyne photoshoots' (Giulianotti 2004, p. 368).

By contributing to the emerging, inter-disciplinary work on the intersection between mega-events and human rights (Lenskyj 2014, Horne 2018, McGillivray *et al*. 2019, Chappelet 2021, Talbot 2023), this conceptual article links discussions from extant sport and human rights literatures and argues that whilst the IOC's professed commitment to, and embrace of human rights, serves as a welcome and positive development, caution must nonetheless be exercised *vis-à-vis* the nature and extent of that commitment. It also borrows from Foucauldian governmentality theory in order to situate the 'clean venue' principle as an exclusionary disciplinary mechanism that single out flows in the mega-event spaces. In offering a critical evaluation of the IOC's most recent turn towards human rights, this article contended that such an embrace must be viewed within the wider legal, contractual, and operational arsenal that the IOC fervently deploys with (prospective) Olympic Host Cities. As best exemplified through the 'clean venue' principle, the embedded nature of the IOC's commercial dominance and preservation within the fabric of the Olympic Games outweighs their embrace of human rights which is merely secondary to their commercial self-interest. Indeed, the marginal two-page treatment which human rights received in the most recent 2018 iteration of the *Operational Requirements* underpinning Host City requirements underscores the peripheral position which human rights occupies within the IOC's political and legal authority.

This paper's subsidiary argument is that the neoliberal drive that underpins the Olympics and wider elite sport and SMEs – which is protected and often insulated by security-related policies and sanitising measures (Boykoff 2020) – means there will always be limitations to any attempts to reform in the field of human rights within the Olympic realm. It is critical, therefore, in view of the fact that positive Olympic 'legacies' do not always materialise that the celebrated reforms that have thus far taken place, are subject to critical and ongoing scrutiny – from academics, advocacy groups, journalists, and practitioners – to determine their human rights compatibility with internationally protected standards. Hence, future work in this area should continue to explore the socio-spatial costs and consequences of the 'clean venue' principle and its location within Olympic 'security dispositifs' (cf. Foucault, 2007). Beyond this, ahead of the upcoming events in Paris (2024) and Los Angeles (2028), the framing of human rights, social justice, and social change by diverse groups – *inter alia*, the media, activist groups and sports' authorities – also remains of particular interest for a more comparative study that can advance our practical and academic understanding of human rights and sport.

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