

ROUTLEDGE RESEARCH IN SPORT, CULTURE AND  
SOCIETY

# The International Olympic Committee, Law, and Accountability

Ryan Gauthier



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The Olympic Games is unquestionably the largest and most important sporting event in the world. Yet who exactly is accountable for its successes and failures? This book examines the legitimacy and accountability of the International Olympic Committee (IOC). This non-governmental organisation wields extraordinary power, but there is no democratic basis for its authority. This study questions the supremacy of the IOC, arguing that there is a significant accountability deficit.

Investigating the conduct of the IOC from an international legal perspective, the book moves beyond a critique of the IOC to explore potential avenues for reform, means of improving democratic procedures and increasing accountability. If the Olympics are to continue to be our most celebrated sporting event, those who organise them must be answerable to the citizens that they can potentially harm as well as benefit.

Full of original insights into the inner workings of the IOC, this book is essential reading for all those interested in the Olympics, sport policy, sport management, sport mega-events, and the law.

**Ryan Gauthier** is an Assistant Professor of Law at Thompson Rivers University, Canada. He completed his PhD thesis on the accountability of the International Olympic Committee at the Erasmus School of Law, Erasmus University Rotterdam, the Netherlands in 2015.

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To Mom

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# Abbreviations

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BRICS	Brazil, Russia, India, China, South Africa
CAS	Court of Arbitration for Sport
CJEU	Court of Justice of the European Union
EU	European Union
FIFA	<i>Fédération Internationale de Football Association</i>
GAL	Global Administrative Law
GANEFO	Games of the New Emerging Forces
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IF	International Federation (for sport)
ILO	International Labour Organization
IMF	International Monetary Fund
INGO	International Non-Governmental Organisation
IO	International Organisation
IOC	International Olympic Committee
LOCOG	London Organising Committee of the Olympic and Paralympic Games
NF	National Federation
NGO	Non-Governmental Organisation
NOC	National Olympic Committee
OCOG	Organising Committee for the Olympic Games
ODA	Olympic Delivery Authority
OGI	Olympic Games Impact reports
OP&Ps	Operational Policies and Procedures
SDO	Suspensions and Debarment Officer
TOP	The Olympic Partners
UDHR	Universal Declaration of Human Rights
UEFA	Union of European Football Associations
UN	United Nations

UNESCO	United Nations Educational, Scientific and Cultural Organization
USOC	United States Olympic Committee
VANOC	Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games
WADA	World Anti-Doping Agency
WBIP	World Bank Inspection Panel
WGI	Worldwide Governance Indicators

# Introduction to the book

## @SochiProblems

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Preparations for the 2014 Winter Olympic Games, like those of Olympic Games past (and if the 2016 Rio Games are any indication, future), went down to the wire. Stories of unfinished infrastructure ran rampant as media members streamed into the Russian city of Sochi and the nearby Olympic venues of Adler (the ‘Coastal Cluster’) and Krasnaya Polyana (the ‘Mountain Cluster’) (Segal 2014). This state of affairs in and around Sochi spawned the short-lived Twitter account @SochiProblems, which on the eve of the Olympic Games had over 30 per cent more followers than the official Sochi Winter Olympics Twitter account (Arrouas 2014).

Of all the possible reasons for the delays in construction, it is doubtful that a lack of manpower was one of them. Estimates of the number of construction workers employed to prepare Sochi for the Olympic Games reveal a virtual city at work. In 2011, a total of 56,000 workers had been employed to work on Sochi’s venues (Sochi 2014 Organizing Committee 2013, p. 25), with the number rising to 70,000 in 2012 (Human Rights Watch 2013, p. 20). Almost 700 contractors were responsible for these workers (Sochi 2014 Organizing Committee 2013, p. 11). Certainly, not all of these workers were recruited from the 340,000 inhabitants of Sochi. While some workers came from other parts of Russia, a significant percentage of these workers were migrant workers (i.e. a worker employed in a state where they are not a national) (*International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (1990), A/Res/45/156, Art. 2.1). In 2012, Russia’s Federal Migration Service estimated that 16,000 workers (or about 23 per cent of workers) had come from beyond Russia’s borders to work on Olympic-related construction projects (Human Rights Watch 2013, p. 20). Others have claimed the number of migrant workers to be closer to 50,000, many without work permits (Vasilyeva 2013).

Workers at Sochi Olympic sites reportedly suffered from abusive employment practices. The non-governmental organisation (NGO) Human Rights Watch uncovered practices such as non-payment of wages, long hours of work, and withholding of identification documents (Human



Rights Watch 2013, p. 20). These practices violated both Russian labour laws and international labour standards. Sochi has not been alone in witnessing large-scale labour rights violations while preparing to host a sports mega-event. Fears have been raised that conditions similar to those at Sochi will prevail at the sites of the 2018 *Fédération Internationale de Football Association's* (FIFA) World Cup, which Russia is hosting (International Trade Union Confederation 2013; *On the Preparation and Conduct of the Russian Federation 2018 FIFA World Cup*, 2017 FIFA Confederations Cup and Amendments to Certain Legislative Acts of the Russian Federation, 7 June 2013, FZ-108). Brazil, host of the 2014 FIFA World Cup, and home to Rio de Janeiro's 2016 Summer Olympic Games, has had problems with worker safety, with multiple deaths at stadiums being constructed for the World Cup (Associated Press 2014). Concerns have also been raised about the treatment of migrant workers in Japan, in advance of the 2020 Tokyo Summer Olympic Games (Kakuchi 2014). And, Qatar, host of the 2022 FIFA World Cup, has come under severe scrutiny for its employment practices from human rights NGOs (Amnesty International 2013; Human Rights Watch 2012) and international trade union organisations (International Trade Union Confederation 2014). A complaint lodged with the International Labour Organization (ILO) alleged general conditions of forced labour in Qatar (ILO 2014).

Labour rights violations are not the only problems that beset hosts of the Olympic Games. In many host cities, citizens are evicted from their homes to make room for stadiums, hotels, media centres, and transportation infrastructure used to support the Games. Hosting the Games also places great strain on the natural environment due to infrastructure construction, increased tourism, transportation requirements, and so forth. Some editions of the Games have been held in countries that regularly violate human rights in a general manner, restricting freedoms of speech and movement, actively discriminating against certain populations, or engaging in regimes of terror. And some editions of the Games have arguably left cities worse off. All of this has led to increased pressure by citizens, NGOs, and Olympic critics on host cities and states, prospective hosts, corporate sponsors, and the international sporting organisations that hold the rights to these sporting events to prevent and remedy these problems.

### **I Accountability for the 'worst outcomes' of hosting the Olympic Games**

This book examines the accountability for the 'worst outcomes' of the Olympic Games, which I define in section 2.3. In particular, it casts its gaze at the International Olympic Committee (IOC), the rights-holder to the Games. The apparently obvious solution to the problems the Games face

would be for the IOC to require hosts to adhere to domestic laws and international obligations that protect against violations of human rights, and other negative outcomes that impact individuals, which the IOC has begun to do so with its Agenda 2020 reform programme. Unfortunately, this is not a viable solution. While the IOC now sets out these requirements, it is possible that the IOC cannot, or will not, enforce them. This book argues that the problem is not necessarily a lack of standards per se, although work can be done on this front, but that a lack of monitoring and enforcement of these standards – or *accountability* – on the part of the relevant actors. These actors include not only the IOC, but also the host city, the Organising Committee for the Olympic Games (OCOG), and the National Olympic Committee (NOC).

The problems that occur at the Olympic Games also occur at other sports mega-events, and even some ‘lesser’ sporting events (the line between what is a sports mega-event and what is a ‘lesser’ sporting event is somewhat subjective (Maennig & Zimbalist 2012, pp. 9–13), and does not need to be drawn for this book). However, this book focuses on the Olympic Games and the IOC, given their respective status as the world’s premier sports mega-event, and the leader of the global sporting system – the Olympic Movement. Actions undertaken by the IOC or the organisers of the Olympic Games are likely to influence the decisions and processes of other sporting organisations, and other event organisers (Hums & Maclean 2013, p. 69).

### **1.1 Defining accountability**

Throughout this book, I will refer to the concept of *accountability*. The term is used in everyday speech without much thought given to what precisely it entails (Bovens 2010, pp. 946–947). Scholars have put forth a plethora of definitions of accountability (Chappelet 2011, p. 320; Bovens 2010, pp. 194–198; Philip 2009, pp. 28–32). While a definition is needed, spending too much time parsing definitions runs the risk of undermining the efficiency of the research project, and suffocating the capacity of the researcher (Houlihan 2013, p. 22). By using an already-existing definition of accountability, this work can also contribute to and build on the systematic, scholarly analysis engaged in by prior authors using a shared understanding.

This research focuses on the IOC, an international actor. As such, I shall use the definition of accountability posed by international relations scholars Ruth W. Grant and Robert O. Keohane. ‘Accountability’, according to Grant and Keohane, is a situation where

some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these

standards, and to impose sanctions if they determine that these responsibilities have not been met.

(2005, p. 29)

This definition is also useful as it has already been used in examining the accountability of FIFA, another international sports organisation, one that is second only to the IOC in global influence (Pielke 2013, p. 256).

In essence, Grant and Keohane's definition of accountability breaks down to four components. First, there is an actor that is to be held to account. This actor may be an individual, or may be an entity – a state, a corporation, or an NGO. The second component is the presence of an accountability forum, to whom account is to be rendered. This forum may be formal, such as a parliament, courts, or an ombudsperson. The forum may also be informal, such as monitoring by civil society, or reporting by the media. The forum may be internally agreed-upon, or may be externally-imposed. The third component of accountability is the existence of standards set out to which the actor is accountable. These standards may be positive, requiring the achievement of a particular goal or following certain procedures, or negative, requiring the actor to refrain from engaging in certain activities. Finally, the fourth component of accountability is consequences for meeting or failing to meet the standards. Although Grant and Keohane use the term 'sanctions', I prefer the term 'consequences'. Sanctions are generally limited to punishments for negative outcomes, while a consequence also considers rewards for positive outcomes (Bovens 2010, p. 952). Consequences may be formal, such as financial awards, disciplinary measures, civil remedies, or penal sanctions. Consequences may also be informal, such as positive or negative media coverage.

Accountability is different from liability. Liability connotes a legal obligation, while accountability does not require such an obligation (*Black's Law Dictionary* 2006, p. 426). As such, liability is a narrower concept than accountability. Liability may be a mechanism of accountability, but the use of liability is problematic when examining international actors, as many international actors do not have obligations under international law, a situation that will be discussed in more detail in Chapter 4. The breadth offered by examining accountability opens up the study to consider options beyond traditional legal analysis.

## **1.2 (Un-)accountability of international sporting organisations**

Organised sport has spent much of its history operating, and attempting to remain, outside of the purview of the state. It was only in the 1950s in the United States (*Radovich v. National Football League*, 352 U.S. 445 (1957)), or the 1970s in Europe (*C-36/74 Walrave and Koch v. Association Union*

*Cycliste Internationale* [1974] ECR 1405)), that the state put sporting organisations on notice that they could be subject to regulation. Regulation of sport has largely been limited to economic matters, such as ensuring that organisations comply with antitrust/competition law, or European Union (EU) rules on the freedom of movement of workers (see Gardiner et al. 2012, p. 146).

Otherwise, the state has been kept out of the governance of sport. A few factors have contributed to this situation. First, unlike international organisations (IO), international sporting organisations do not have states members that are involved in their governance. Second, international sporting organisations are nigh-universally headquartered in Switzerland, which is known for neutrality and a hands-off approach to oversight of organisations headquartered there. Third, international sporting organisations have actively fought against political ‘interference’ for years. All of this has fostered a belief in those who oversee sport that sport is exceptional (e.g. Bruyninckx 2012). Even governments have bought into the notion that sport is exceptional. This belief has been expressed in instruments such as the Treaty on the Functioning of the European Union, stating that the EU shall ‘take account of the specific nature of sport’ (Art. 165), and in a recent United Nations resolution that ‘supports the independence and autonomy of sport as well as the mission of the IOC in leading the Olympic Movement’ (United Nations General Assembly 2014, ¶ 8). These factors have also led Ken Foster to label the sporting world as a ‘transnational autonomous legal order’, an idea discussed further in Chapter 3 (Foster 2003, p. 2).

The autonomy of the global sporting movement has created a situation where international sporting organisations are unaccountable. From 2006–2008, the NGO OneWorldTrust created indices to measure the accountability of various international actors: international organisations, international NGOs, and transnational corporations. The index measured transparency, participation in decision-making, organisation self-evaluation, and complaint-and-response mechanisms (Lloyd et al. 2008, p. 5). The 2007 edition examined FIFA, while the 2008 edition measured the IOC. FIFA was found to be deeply unaccountable, ranking 24th out of thirty organisations measured, and at the bottom of the list of NGOs (Lloyd et al. 2007, p. 7). The IOC performed even worse in 2008, being ranked as the least accountable of the thirty measured organisations, ranking behind the Halliburton oil corporation, and the North Atlantic Treaty Organization military alliance (Lloyd et al. 2008, p. 6).

Roger Pielke Jr. has examined the accountability of FIFA in more detail. Pielke (2013) found that FIFA was largely unaccountable, suggesting that avenues of accountability, such as the legal system, or influence of peer organisations, were limited at best in their application to FIFA. The one exception to this was ‘market forces’, in other words, the withdrawal of

sponsorships. Since Pielke's article was published, this outcome has come to pass to some degree, as several sponsors have not renewed their commitments with FIFA in 2014/15 in the wake of allegations of corruption (Gibson 2015b). However, FIFA is likely to obtain new sponsors, and may not be deeply affected. There is little reason to believe that a similar analysis of the IOC would lead to a different outcome.

In 2015, Arnout Geeraert examined the accountability of the thirty-five international sports federations that participate in the Olympic Games. Geeraert measured accountability according to the institutional design of the federations, focusing on the selection of members, reporting by the federation of activities, administrative procedures, institutional checks, and elections. In the end, he found the majority of federations 'do not have an institutional design implemented that allows their constituents to monitor and sanction decision-making body members' (2015, p. 9). In other words, the international federations were unaccountable to those they serve, let alone anyone else. As such, not only is the IOC lacking in accountability, the international federations for sport appear to be faring even worse.

### ***1.3 The worst outcomes of the Olympic Games – a story as old as Olympus***

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

A first category of human rights issues are those that occur 'around' the Games. These are issues that exist in the host country, but are not directly caused by the Games themselves. For instance, a government may engage in violations of human rights. This was the case with the 1936 Berlin Summer Olympics, conducted under the auspices of the Nazi regime (it should be noted that the Games were awarded to Germany in 1932, during the Weimar Republic, and if the other host, Barcelona, were chosen, they would have been held at the onset of the Spanish Civil War), and the 1968 Mexico City Summer Games, which witnessed the Tlateloco Massacre (Black & Bezanson 2004, p. 1246). The U.S.S.R. invaded Afghanistan prior to the 1980 Moscow Summer Olympics, sparking a boycott by many Western states (Rosner & Low 2009, pp. 46–50). Afghanistan was invaded

by the U.S. on the eve of the 2002 Salt Lake City Games, marking the second time Afghanistan was invaded by the host of an upcoming Games, although this invasion did not spark a boycott. The 1988 Seoul Summer Olympics were awarded to a military regime (Black & Bezanson 2004). The 2000 Sydney Summer Olympics (Neilson 2002) and the 2010 Vancouver Winter Olympics (O'Bonsawin 2011) featured heated debates over the treatment of aboriginal peoples. The 2008 Beijing Olympics set off a host of protests regarding human rights concerns in China such as freedom of speech, religion, and the autonomy and independence of Tibet (Close 2010, p. 2988). Most recently, the 2014 Sochi Olympic Games were overshadowed by a Russian law prohibiting the dissemination of 'pro-homosexual propaganda' (*On the Introduction of Amendments to Article 5 of the Federal Law. 'On the Protection of Children from Information Causing Harm to their Health and Development' and Separate Acts of the Russian Federation Aimed at the Protection of Children from Information Propagandising the Refutation of Traditional Family Values*, 2 July 2013, FZ-135). These are problems that would exist whether or not the Olympic Games took place in that country. The IOC is not bound by international law to 'fix' the human rights situations in any of these countries. It is certainly debatable whether the Games should be awarded to countries that have significant human rights problems, or if the Games should be removed upon the discovery of human rights violations. However, it is too much of a stretch to hold that the IOC has a positive duty to improve the human rights situation in a host state.

A second set of human rights issues associated with the Olympic Games are those that specifically relate to the practice of sport. Consider for instance, the status of women at the Olympics. During the ancient Olympics, only free men who spoke Greek were allowed to compete in the Games, disenfranchising a sizeable segment of the population. More striking, married women were not allowed to watch the Games, on penalty of death, potentially because they were too 'impure' to witness the sacred rights (Spivey 2004, p. 199; Swaddling 1999, pp. 40–41). Jumping forward to the twentieth century, women remain at the periphery of the Olympics. Although women were allowed to participate in the Olympics as of 1900, their participation was limited to only certain events. The 1928 Amsterdam Summer Olympics was a negative turning point for women's participation. Eleven women participated in the 800m run. Reporters claimed that five of the women dropped out of the race entirely, and five more collapsed at the finish line, exhausted; although this claim has been disputed since (Pieroth 1996, p. 5; Emery 1982). Regardless of the veracity of the claim, it either forced the hand of the IOC, or allowed the IOC to justify, barring women from long-distance running until 1960. For more than 100 years, women struggled to participate in the same disciplines as men, with the final barrier – ski jumping – falling only in the 2014 Winter Olympic

Games. Difficulties have also arisen as National Olympic Committees (NOCs), the organisations for each country that sends athletes to the Games, have refused to send female athletes as recently as the 2012 Summer Olympics, necessitating IOC intervention (Gibson 2012). Other issues such as sex-testing of female athletes also have human rights implications (Cooper 2012; Saleem 2010). These issues are considered to be of a sporting nature, related to the conduct of sport, and are often referred to as the core of *lex sportiva*, rules within and for the system of sport (Duval 2013, p. 827). For instance non-discrimination is enshrined in the Olympic Charter, and it is this provision that is applied to the participation of women in sport in recent years (IOC 2015, Fundamental Principles of Olympism ¶ 6, Rule 2.6). Rules such as these, argue sporting bodies and some academics, are not for domestic courts to weigh in on, and indeed, courts have often shied away from doing so (e.g. Foster 2003, discussion in Chapter 3).

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

This book is concerned with the problems in this latter category. These problems are those that may arise as a result of hosting the Olympic Games, and that affect a broad section of the general population. These problems will be examined more thoroughly in Chapters 3 and 4, where I examine the legal responsibilities of the IOC for the worst outcomes of the Olympic Games.

#### **1.4 Research questions**

Summing up the discussion so far, the central hypothesis of this book is that the worst outcomes of the Olympic Games are symptomatic of a lack of accountability on the part of the IOC. Absent accountability, the IOC