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Coming Full Circle: The International Legal Status of the International Olympic Committee

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**COMING FULL CIRCLE: THE INTERNATIONAL LEGAL STATUS OF THE
INTERNATIONAL OLYMPIC COMMITTEE**

*William Thomas Worster**

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INTRODUCTION

The International Olympic Committee (IOC)¹ occupies an ambiguous position in the international community. Part sporting event, part non-governmental organization, part Swiss association, part international organization, and perhaps part something else. It is tempting to simply label it *sui generis*. 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.² Nonetheless, it is not *sui generis*. Its status is understandable in international law, albeit being unusual, by analogy to other entities. Its personality is best described as being in constant fluctuation. However, incrementally, the IOC is moving towards a status of an international legal person, aiming to fulfil the dream of its founders.

This Article will first review the historical origins and development of the IOC, revealing multiple attempts to define the entity and its evolving ambiguity. The Article will then address each of the possible options in turn of whether the IOC is a Swiss association, an international organization, or something else. It will conclude that it is something else and that status is recognized in international law.

I. HISTORY OF THE IOC

While this Article is not intended to function as a history of the IOC, a chronological narrative is necessary because the IOC is an old organization, older than most international entities and even many states. Views on the Committee have evolved and fluctuated over

¹ This Article will abbreviate the International Olympic Committee as “IOC” though some of the sources cited herein abbreviate it as “CIO,” in line with its name in French, *Comité International Olympique*.

² See Monique Berlioux, *L'association sportive: un contrat centenaire [The sports association: a contract Centenary]*, 61 REVUE JURIDIQUE ET ÉCONOMIQUE DU SPORT 31 (2001).

time. The history of the IOC is also revealing; it demonstrates how the IOC's status has changed over time.

The IOC was founded in 1894 at a meeting of the *Union des Sociétés Française de Sports Athlétiques* (USFSA) in Paris.³ Under the leadership of Pierre de Coubertin and Demetrios Vikelas at the congress of the USFSA, the organization decided to revive the ancient Olympic Games and set the first date of the modern games for 1896 in Athens and the second for 1900 in Paris. After this decision, the organization formed the International Olympic Committee and Vikelas was elected its first president. After the Athens Games, Vikelas stepped down and Coubertin took office.

The precise nature of its legal existence did not appear to be a matter of much concern at first and was largely undefined for most of its existence.⁴ When the IOC was created in Paris, Coubertin and other members took no step to register it as a legal entity under domestic law.⁵ The first statute of the IOC was written in 1908 and did not mention its legal status.⁶ This may have been because the members intended for the IOC to have no permanent seat,⁷ and would, informally, operate from Coubertin's home.⁸ Mbaye concludes from this history that the founders simply ignored legal formalities.⁹ In fact, in line with their desire to keep the Olympics entirely free of politics, the founders

³ See ROGER BARTLETT ET AL., *ENCYCLOPEDIA OF INTERNATIONAL SPORTS STUDIES* 678 (2012).

⁴ See ALEXANDRE MIGUEL MESTRE, *THE LAW OF THE OLYMPIC GAMES* 38 (2009).

⁵ See JEAN-LOUP CHAPPELET, *LE SYSTÈME OLYMPIQUE* 76 (1991); Franck Latty, *Le Statut juridique du Comité international olympique – brève incursion dans les lois de la physique juridique [The legal statute of the International Olympic Committee – brief incursion into the legal physique]*, in *DROIT ET OLYMPISME [LAW AND OLYMPISM]* (Mathieu Masionneuve ed., 2015).

⁶ See Latty, *Le Statut juridique*, *supra* note 5.

⁷ See PIERRE DE COUBERTIN, *MÉMOIRES OLYMPIQUES [OLYMPIC MEMORIES]* 168 (1997); Nicolas Politis, *La condition juridique des associations internationales [The legal condition of international associations]*, 1923 *JOURNAL DE DROIT INTERNATIONAL* 473 (1923).

⁸ See Latty, *Le Statut juridique*, *supra* note 5.

⁹ See KEBE MBAYE, *LE COMITÉ INTERNATIONAL OLYMPIQUE ET L'AFRIQUE DU SUD - ANALYSE ET ILLUSTRATION D'UNE POLITIQUE SPORTIVE HUMANISTE [THE INTERNATIONAL OLYMPIC COMMITTEE AND SOUTH AFRICA - ANALYSIS AND ILLUSTRATION OF A HUMANIST SPORTS POLICY]* 28 (1995).

actively seemed opposed to making use of any legal form for the project.¹⁰

In 1915, the IOC relocated from Paris to Lausanne to flee World War I,¹¹ having functioned in Paris for more than twenty years in legal limbo. Within a few years, the Municipality of Lausanne sought clarification of the IOC's status. The Municipality wanted to clarify the situation and concluded that it was not a Swiss association, so it needed to be formally incorporated to continue to enjoy legal rights in the state.¹² In reaction to the city's inquiry, Coubertin insisted that the IOC was not an association under Swiss law, and instead invoked a somewhat romantic view that it was separated from "common" trade.¹³ In fact, Coubertin viewed the IOC as akin to the League of Nations.¹⁴ Politis explains this vision by noting that, Coubertin thought that if it were to register as a Swiss association, the IOC would then lose its international character.¹⁵ Nonetheless, during this time Switzerland did agree to grant the IOC exemptions from customs duties.¹⁶

Over the next few decades, this uneasy, informal situation remained. During this time, Switzerland appeared to work with the

¹⁰ See Latty, *Le Statut juridique*, *supra* note 5; Pierre-Alain Hug, *De l'utopie au pragmatisme: l'installation du CIO à Lausanne (1906-1927)* [From utopia to pragmatism: the installation of the IOC in Lausanne (1906-1927)], in *SPORTS EN FORMES* [FIT SPORTS] 95 (Jaccoud & Busse eds., 2001).

¹¹ See Latty, *Le Statut juridique*, *supra* note 5.

¹² See MESTRE, *supra* note 4, at 38; CHARLES GILLIÉRON, *LES RELATIONS DE LAUSANNE AT DU MOUVEMENT OLYMPIQUE À ÉPOQUE DE PIERRE DE COUBERTIN 1894-1939* [THE RELATIONS OF LAUSANNE AND THE OLYMPIC MOVEMENT DURING THE PERIOD OF PIERRE DE COUBERTIN 1894-1939], at 92 (1993).

¹³ See Jean-Loup Chappelet, *Switzerland's Century-Long Rise as the Hub of Global Sport Administration*, 38 INT'L J. HIST. SPORT 569 (2021) ("The IOC's – which at this time meant Coubertin's – relations with Lausanne cooled in 1920, especially when the city council attempted to determine an official status for the IOC. Acting on legal advice, the city asked the IOC to register with the Vaud company register which shows who is authorized to sign contracts. Coubertin refused categorically, arguing that the IOC could not be likened to a vulgar commercial enterprise, and the issue of the IOC's status remained unresolved until 1981."); Latty, *Le Statut juridique*, *supra* note 5; Gilliéron, *supra* note 12, at 92-93.

¹⁴ See MESTRE, *supra* note 4, at 38; PIERRE MORATH, *LE CIO À LAUSANNE: 1939-1999* [THE IOC IN LAUSANNE: 1939-1999], at 185 (2000).

¹⁵ See Politis, *supra* note 7, at 471.

¹⁶ See MORATH, *supra* note 14, at 185.

understanding that the IOC was merely a Swiss association,¹⁷ even though it operated internationally and was largely *de facto* exempt from Swiss jurisdiction.¹⁸ Switzerland had, after all, confirmed its exemption from taxation during this time.¹⁹ But by the 1970s, the question of its status was unavoidable and even the IOC acknowledged that it needed clarification. The IOC set up an internal commission to find a solution for its legal status, provided it adhered to two guiding principles: (1) that the IOC and its staff would benefit from having its juridical personality recognized and (2) that the IOC wanted to be continue to be capable of maintaining law suits but wanted some form of immunity from lawsuit.²⁰ Implicitly, the IOC understood that it already enjoyed legal personality, because it wanted to have this personality recognized. Eventually, the IOC commission internally concluded that the IOC was most likely a Swiss non-governmental organization (NGO).²¹

The IOC leadership resisted this conclusion.²² Instead, in 1975, the Committee revised the Olympic Charter to make a strong claim to international legal personality.²³ In this document, the IOC stated that it was an association with legal personality, but not under Swiss law, rather under international law,²⁴ and, as such, it was governed by

¹⁷ See MESTRE, *supra* note 4, at 38; Berlioux, *supra* note 2, at 31.

¹⁸ See MESTRE, *supra* note 4, at 38 (“For many years, while the ‘Olympic Law’ remained in forced, the legal nature of the IOC was never defined perhaps because the IOC has always been confronted with the contradiction between its legally recognized status as a private law association in and its current conduct as a particular type of public law organization.”); Berlioux, *supra* note 2, at 31.

¹⁹ See MORATH, *supra* note 14, at 188.

²⁰ See MESTRE, *supra* note 4, at 39.

²¹ See Chappelet, *supra* note 13, at 579 (“During this same period, the IOC’s rapidly growing earnings from the sale of broadcasting rights to major television networks and syndicates resulted in ever-more questions being asked about the organization’s legal status. An IOC commission, chaired by the Bern lawyer and IOC member Marc Hodler, concluded that the committee could be considered a nonprofit association, defined by articles 60 and subsequent of the Swiss Civil Code.”).

²² See *id.*

²³ See International Olympic Committee, Olympic Charter, Rule 11 (1975) (“[A]n association in international law with legal personality, of unlimited duration and with its registered office in Switzerland”).

²⁴ See Latty, *Le Statut juridique*, *supra* note 5.

international law and independent of national laws.²⁵ This appears to have confirmed Coubertin's initial vision for the status of the Committee. Latty and Mbaye argue that this assertion by the IOC itself should simply be understood as demonstrating a poor understanding of international law by the drafters of the 1975 Charter.²⁶ But such a position is dubious because, by 1975, the IOC benefited from a very strong team of lawyers and was keenly aware of the controversy over its status and legal regime.

Paradoxically, the IOC was also subjected to several lawsuits during this time. In 1979, the Taiwan National Olympic Committee (NOC) sued the IOC in the courts of the Canton of Vaud (in which the IOC sat) when the IOC demanded that the Taiwan NOC change its name and flag in order to continue participating in the Games.²⁷ The courts, however, never reached a conclusion and the Taiwan NOC withdrew the complaint after settling with the IOC.²⁸ Thus, while the courts, at least on a preliminary basis, asserted jurisdiction,²⁹ their competence over the IOC was not confirmed. Shortly, thereafter, the IOC began the process of creating the Court of Arbitration for Sport (CAS) to provide a venue for complaints, while largely avoiding Swiss courts.³⁰

Several cases were also filed in the US. In 1980, in the case of *Liang Ren-Guey v. Lake Placid 1980 Olympic Games Inc.*,³¹ the U.S. Department of Justice intervened with a Statement of Interest, an unusual move if the IOC was a mere NGO, arguing that the United

²⁵ See MESTRE, *supra* note 4, at 39.

²⁶ See Keba Mbaye, *La nature juridique du CIO [The legal nature of the IOC]*, in SPORT, DROIT ET RELATIONS INTERNATIONALES [SPORT, LAW AND INTERNATIONAL RELATIONS] 88 (P. Collom, ed., 1988); Latty, *Le Statut juridique*, *supra* note 5.

²⁷ See JEAN-LOUP CHAPPELET, AUTONOMY OF SPORT IN EUROPE 24 (2010); JAMES A. NAFZIGER, INTERNATIONAL SPORTS LAW 237 (2nd ed., 2004); CHAPPELET, LE SYSTÈME OLYMPIQUE, *supra* note 5, at 79.

²⁸ See NAFZIGER, *supra* note 27 at 66; CHAPPELET, LE SYSTÈME OLYMPIQUE, *supra* note 5, at 237.

²⁹ See Latty, *Le Statut juridique*, *supra* note 5, at 429.

³⁰ See Gérald Simon, *L'arbitrage des conflits sportifs [Arbitration of sports disputes]*, 1995 REVUE DE L'ARBITRAGE 185, 189 (1995).

³¹ See *Liang Ren-Guey v. Lake Placid 1980 Olympic Games Inc.*, 72 A.D. 439 (N.Y. App. Div. 1980).

States had a serious foreign policy interest in the Olympic Games.³² It further stated that the United States' international reputation was on the line because it had made commitments to the IOC.³³ It is important to note that the defendant in this case was not formally the IOC, but rather the local Olympic Games organizing committee.³⁴ A few years later, the IOC appeared before U.S. courts again. In 1984, the IOC was sued at the Ninth Circuit in *Martin v. International Olympic Committee*.³⁵ In that case, the court concluded that it should be "should be wary of applying a state statute to alter the content of the Olympic Games [because] [t]he Olympic Games are organized and conducted under the terms of an international agreement-the Olympic Charter."³⁶ In addition, the U.S. Constitution protections of equal protection did not apply to Olympic Games.³⁷ Then in 1987, in *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee & IOC*, the U.S. Supreme Court held that the IOC was "a highly visible and influential international body,"³⁸ stopping a bit short of recognizing it as an international legal person, but still going farther than seeing it as a mere Swiss association.

Part of the reason for the generous approach of the United States might be that a few years prior to the *Martin* case, in 1981, the Swiss Federal Council decided to explicitly grant (or recognize or acknowledge) the IOC's status in Switzerland, in another attempt to settle its status. According to Chappelet, the Swiss came to the bargaining table only after the IOC threatened to leave Switzerland if its status as a true international organization was not confirmed.³⁹ The

³² See David J. Ettinger, *The Legal Status of the International Olympic Committee*, 4 PACE INT'L L. REV. 97 (1992); James G. Goettel, *Is the International Olympic Committee Amenable to Suit in a United States Court?*, 7 FORDHAM INT'L L.J. 61, 71 n.91 (1984).

³³ *Id.*

³⁴ See *Liang*, 72 A.D. at 535.

³⁵ See Goettel, *supra* note 32, at 61.

³⁶ See *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 673, 705 (9th Cir. 1984); Ettinger, *supra* note 32, at 97.

³⁷ See *Martin*, 740 F. 2d. at 673.

³⁸ See *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm. & IOC*, 483 U.S. 522 (1987); Ettinger, *supra* note 32, at 97.

³⁹ See Chappelet, *Switzerland's Century-Long Rise*, *supra* note 13, at 569 ("Behind the Charter's words lay the IOC's desire to obtain the international status it believed its role in the world deserved. Switzerland's initial reluctance to provide a better status

Council recognized the “importance and the universal vocation of [the IOC]”⁴⁰ which is not out of keeping with an NGO that has international activities. However, the Council added that relations between Switzerland and the IOC would now clearly lie with the foreign relations ministry,⁴¹ giving it a form of privileged status,⁴² which is highly unusual for a domestic association, to say the least. Apparently, this settlement was adopted by the Council over the objections from its own foreign ministry,⁴³ though the Head of the diplomatic and consular law department at the Swiss Ministry of Foreign Affairs at the time seemed to instead advocate in favor of the IOC’s position.⁴⁴ Some

than that of a nonprofit association led the IOC to consider several invitations to move to other cities during the 1970s. However, the Swiss government finally accorded the IOC a certain international status in 1981 and the IOC definitively decided to remain in Lausanne.”); *see also* MORATH, *supra* note 14, at 190.

⁴⁰ *See* Swiss Federal Council (Kurt Furgler), Decree (July 8, 1981), *reprinted at The International Statute of the IOC*, OLYMPIC REV. No. 169, 641 (Nov. 1981) [hereinafter Swiss Federal Council Decree 1981].

⁴¹ *See id.* (“the Federal Council wishes to note that it is in the interests of our country to have your Committee here, where it has had its headquarters since 1915, within the area of Switzerland’s external relations.”).

⁴² *See id.*

⁴³ *See id.* (“In September 1981, despite resistance from the Federal Department of Foreign Affairs, the Swiss government ‘decided to grant your committee [the IOC] a particular status that takes into account its universal activities and its specific character as an international institution.’”) (citing Letter from Swiss Federal Council, to the IOC (Sept. 17, 1981), *reproduced in* LE COMITE INTERNATIONAL OLYMPIQUE ET LE DROIT INTERNATIONAL 220 (2001)).

⁴⁴ *See* Frédéric Burnand, *La Suisse met de l'ordre dans ses relations avec le CIO* [Switzerland puts its relations in order with the IOC], SWISSINFO.CH (Nov. 1, 2000), <https://www.swissinfo.ch/fre/vivre-vieillir/la-suisse-met-de-l-ordre-dans-ses-relation-s-avec-le-cio/1734294> (“Mais cette situation pourrait évoluer. Le ministère des Affaires étrangères est en effet chargé de préparer une loi sur le statut des organisations internationales en Suisse. ‘Il appartiendra ensuite au Conseil fédéral de déterminer s’il veut être compétent pour accorder au CIO la plénitude des privilèges et immunités d’une organisation intergouvernementale. Mais cette loi devra être approuvée par le parlement et là on se prépare à une belle bagarre’, avertit Evelyne Gerber.” [“But this situation could change. The Ministry of Foreign Affairs is in fact responsible for preparing a law on the status of international organizations in Switzerland. ‘It will then be up to the Federal Council to determine whether it wants to be competent to grant the IOC the full privileges and immunities of an intergovernmental organization. But this law will have to be approved by parliament and there we are preparing for a big fight,’ warns Evelyne Gerber.”]) (At the time,

have concluded that the Council thus recognized the IOC's status as an "international organization,"⁴⁵ though it is not entirely clear whether such a phrase refers to intergovernmental organizations or international non-governmental organizations. And yet, the decree only exempted the IOC from certain taxes and limits on the employment of foreign nationals;⁴⁶ it did not grant an expansive privileges and immunities regime. After the decree, the IOC began construction of its expanded headquarters, reflecting its commitment to remain in Switzerland.⁴⁷

The Swiss Federal Council declined to expressly state that the IOC's juridical status flows from Swiss law when it stated that the IOC "benefits in Switzerland from a juridical nature and thus from rights and liberties guaranteed by Swiss law."⁴⁸ This carefully worded text avoids stating equivocally that the IOC is a Swiss association and instead states the Committee has a juridical status in Switzerland without clearly referring to the legal order that is the source of this status. This ambiguity was only confirmed when the Council concluded that the IOC simply has a "special" status as an "international institution."⁴⁹

At the same time that the Swiss Federal Council granted the IOC its special status, several states adopted the Nairobi Treaty on the Protection of the Olympic Symbol (Olympic Symbol Treaty).⁵⁰ This instrument granted the IOC exclusive ownership of and control over the intellectual property of the Olympic Symbol, with the aim of

Evelyn Gerber was the head of the diplomatic and consular law department at the Swiss Ministry of Foreign Affairs.).

⁴⁵ See Christoph Vedder, *The International Olympic Committee: An Advanced Non-Governmental Organization and the International Law*, 27 GERM. YB INT'L L. 233, 245 (1984).

⁴⁶ See MORATH, *supra* note 14, at 190.

⁴⁷ See JÜRGEN SCHROEDER, *SYMBOLIK DER OLYMPISCHEN BEWEGUNG: GRUNDLAGEN UND MÖGLICHKEITEN EINES RECHTLICHEN SCHUTZES* [SYMBOLISM OF THE OLYMPIC MOVEMENT: BASICS AND POSSIBILITIES OF A LEGAL MOVEMENT] 76, 86 (1976); see also Vedder, *supra* note 45, at 245.

⁴⁸ See Swiss Federal Council Decree 1981, *supra* note 40.

⁴⁹ See *id.* ("In view of these considerations, the Federal Council has decided to accord to your Committee a special statute which will take into account its universal activities and its specific character as an international institution.").

⁵⁰ See Nairobi Treaty on the Protection of the Olympic Symbol, Sept. 26, 1981, WIPO No. TRT/NAIROBI/001.

protecting a reserved stream of revenue for the IOC and its operations. Such an act could have been achieved through Swiss law and yet the states parties determined that it was more suitable for a treaty.⁵¹ The Nairobi Treaty currently has fifty-six states parties, with the most recent adherents being Saudi Arabia on October 8, 2021, Paraguay on November 25, 2022, and North Korea on January 30, 2024,⁵² demonstrating that the treaty – and its international protections – continue to be seen as relevant and important.

Following the Swiss decree and Nairobi Treaty, in 1982, the IOC briefly considered seeking confirmation from the UN General Assembly of its international legal personality in the form of a declaration that would protect the Olympic Games and affirm that they were rules of international law as prescribed by the IOC.⁵³ However, as Ettinger reports, the IOC abandoned the plan when it appeared that the political mood was not favorable, in light of the 1980 boycott of the Moscow Games by the United States and the possibility that the USSR would retaliate by boycotting the 1984 Los Angeles Games.⁵⁴ Therefore, the IOC judged that it was better to postpone such a declaration, and it has not reappeared since.⁵⁵

Moving into the 1990s, the IOC maintained this cautious and nuanced approach. In 1991, the IOC revised the Olympic Charter once more to make far less sweeping claims to status.⁵⁶ The revised Charter stated “[t]he IOC is an international non-governmental, non-profit organization, in the form of an association endowed with the legal personality, recognized by decree of the Swiss Federal Council of September 17, 1981, and whose duration is unlimited”.⁵⁷ The claim to constitution under international law was dropped, but the IOC still claimed to be “international” with reference to the Swiss decree. It acknowledged that its form was an association, though not explicitly one under Swiss law. Perhaps importantly, it insisted that its status was “recognized” by Switzerland not necessarily “constituted by.”

⁵¹ *See id.*

⁵² *See id.*

⁵³ *See* NAFZIGER, *supra* note 27, at 134; Ettinger, *supra* note 32, at 97.

⁵⁴ *See id.*

⁵⁵ *See id.*

⁵⁶ *See* MESTRE, *supra* note 4, at 39.

⁵⁷ *See* Latty, *Le Statut juridique*, *supra* note 5.

While it might appear that the IOC was becoming domesticated as purely a Swiss association, other trends flowed in the opposite direction. In 1993, the UN revived the tradition of calling for an Olympic truce,⁵⁸ which is has repeated since.⁵⁹ Also, in 1992, the IOC was permitted to address the UN Security Council Sanctions Committee and acquire exemptions for Yugoslav athletes to attend the Olympics.⁶⁰ In 1999, Switzerland granted the IOC more extensive exemptions from taxes as well as a privileged customs regime.⁶¹

More significantly, in 2000, Switzerland and the IOC reached a bilateral agreement on status.⁶² Interestingly, for what purports to be

⁵⁸ See G.A. Res. 48/11, Observance of the Olympic Truce (Oct. 25, 1993); *See also* G.A. Res. 50/13, The Olympic Ideal (Nov. 7, 1995); G.A. Res. 52/21, Building a Peaceful and Better World Through Sports and the Olympic Ideal (Nov. 25, 1997); G.A. Res. 54/34, Building a Peaceful and Better World Through Sports and the Olympic Ideal (Nov. 24, 1999); G.A. Res. 56/75, Building a Peaceful and Better World Through Sports and the Olympic Ideal (Dec. 11, 2001); Org. of African Unity [OAU], Council of Ministers, Fifty-Eighth Ordinary Session, CM/Res.1472(LVIII) (June 23-26, 1993); OAU, Council of Ministers, Sixtieth Ordinary Session, CM/Res. 1530(LX) (June 6-11, 1994); OAU, Council of Ministers, Sixty-Second Ordinary Session, CM/Res.1608(LXII) (June 21-23, 1995); *Annan, General Assembly President issue call to heed Olympic Truce*, UN (Jan. 31, 2002), <https://news.un.org/en/story/2002/01/26542> (“ . . . the Olympic Truce can offer a neutral point of consensus, a window of time to open a dialogue, a pause to provide relief to a suffering population, said Mr. Annan . . . Meanwhile in New York, Mr. Han [UNGA President Han Seung-soo] made a solemn appeal before the Assembly to observe the Olympic Truce, which he said served as a hallowed principle of the Olympic Games.”); Andreas Wax, *Public international sports law - a 'forgotten' discipline?*, 3-4 INT’L SPORTS L.J. 25 (2010) (discussing the history of the “Olympic truce”).

⁵⁹ See G.A. Res. 71/160, Sport as a Means to Promote Education, Health, Development and Peace (Dec. 16, 2016); G.A. Res 78/10, Building a Peaceful and Better World Through Sport and the Olympic Ideal (Nov. 21, 2023); *UN General Assembly adopts Olympic Truce for Paris 2024*, UN (Nov. 21, 2023), <https://olympics.com/ioc/news/un-general-assembly-adopts-olympic-truce-for-paris-2024>.

⁶⁰ See MESTRE, *supra* note 4, at 39 n.79.

⁶¹ See FRANCK LATTY, *LE CIO ET LE DROIT INTERNATIONAL* 169 (2001).

⁶² See Accord entre le Conseil fédéral suisse et le Comité International Olympique relatif au statut du Comité International Olympique en Suisse [Agreement Between the Swiss Federal Council and the International Olympic Committee Regarding the statute of the International Olympic Committee in Switzerland], Switz.-IOC, Nov. 1, 2000, RO 2001 845, <https://www.fedlex.admin.ch/eli/oc/2001/118/fr> [hereinafter Switz.-IOC Accord 2000].

a mere Swiss association, the Swiss Federal Council agreed to entered into bilateral negotiations and agreement as equals, rather than continue employing the form of a decree. In the agreement, the parties explained that the reason for the agreement was that the IOC had a “universal role” with importance for “international relations”, enjoyed global “notoriety” and had entered into many cooperation agreements with intergovernmental organizations.⁶³

The terms of this agreement bear many of the hallmarks of an international organization headquarters agreement,⁶⁴ and it is very similar to the headquarters agreement between the Swiss Government and the International Committee of the Red Cross (ICRC).⁶⁵ The agreement specifically acknowledges that the IOC is exercising “elements of international legal personality.”⁶⁶ Switzerland recognized that the IOC has legal capacity,⁶⁷ freedom of action,⁶⁸ freedom to dispose of funds,⁶⁹ exemption from taxation,⁷⁰ and

⁶³ See *id.* at preamble (“considérant que le rôle universel du Comité International Olympique dans un domaine important des relations internationales, la notoriété qui est la sienne de par le monde et les accords de coopération qu’il a conclus avec des organisations intergouvernementales font apparaître des éléments de la personnalité juridique internationale” [“Considering that the universal role of the International Olympic Committee in a main importance of international relations, the global notoriety which it has and the cooperation agreements it has concluded with intergovernmental organizations, governmental documents reveal elements of international legal personality”]).

⁶⁴ See *id.* at arts. 11-18.

⁶⁵ See generally *id.*

⁶⁶ See *id.* at preamble; but see *id.* at art. 12 (“Assistance des représentations diplomatiques et consulaires suisses à l’étranger. Le CIO pourra avoir recours, en cas de nécessité, à l’assistance des représentations diplomatiques et consulaires suisses à l’étranger. [Assistance from Swiss diplomatic and consular representations abroad The IOC may have recourse, if necessary, to the assistance of Swiss diplomatic and consular representations abroad.]”).

⁶⁷ See *id.* at art. 1 (“Capacité juridique. Le Conseil fédéral suisse reconnaît la capacité juridique en Suisse du Comité International Olympique, désigné ci-après le CIO. [Legal capacity The Swiss Federal Council recognizes the legal capacity in Switzerland of the International Olympic Committee, hereinafter referred to as the IOC.]”).

⁶⁸ See *Switz.-IOC Accord 2000*, *supra* note 62, at art. 2.

⁶⁹ See *id.* at art. 5.

⁷⁰ See *id.* at art. 3.

preferential customs treatment.⁷¹ It has freedom to hire international personnel free from restriction under Swiss immigration restrictions⁷² and their freedom to travel to Switzerland.⁷³ Identification cards, issued by the IOC to its staff, must comply with the standards applicable to diplomatic missions.⁷⁴ It must be acknowledged that the IOC does pay some taxes, including federal customs duties, value-added tax (VAT), and taxes on the profits of the companies it owns, and IOC employees pay Swiss income taxes.⁷⁵ Subsequently, In 2008, the Canton of Vaud also entered into an agreement with the IOC to exempt the organization from taxes.⁷⁶ According to the Ministry of Foreign Affairs, it was prepared to grant the IOC privileges and immunities and was only restrained by the lack of parliamentary support for such a move.⁷⁷ Curiously, recognizing the IOC's "juridical capacity in Switzerland" ("*capacité juridique en Suisse*") would seem to be completely unnecessary if it was a Swiss association. Especially the text that its capacity was being recognized "in" Switzerland suggests that Switzerland was acknowledging that it drew its juridical status from another source of law, which could only be international law, as it is not incorporated under any other domestic legal regime. However, tellingly, the relations between the IOC (as a corporate body) and Switzerland are conducted through the Federal Department of Foreign Affairs.⁷⁸ The IOC is now described as quasi-diplomatic.⁷⁹ And yet, Switzerland stated that it did not consider the IOC to be an

⁷¹ See *id.* at art. 4.

⁷² See *id.* at art. 7.

⁷³ See *id.* at art. 9.

⁷⁴ See Switz.-IOC Accord 2000, *supra* note 62, at art. 10 §1.

⁷⁵ See Chappelet, *Switzerland's Century-Long Rise*, *supra* note 13.

⁷⁶ Jean-Loup Chappelet, *La place olympique Suisse au début du XXI^e siècle [The Swiss Olympic Square at the Beginning of the 21st Century]*, in *LA PLACE OLYMPIQUE SUISSE: EMERGENCE ET DEVENIR [THE SWISS OLYMPIC SQUARE: EMERGENCE AND FUTURE]* 172 (2019).

⁷⁷ Burnand, *supra* note 44.

⁷⁸ See Switz.-IOC Accord 2000, *supra* note 62, at arts. 8, 10 §2.

⁷⁹ See Jean-Pierre Karaquillo, *Droit international du sport [International sports law]*, 309 *HAGUE ACAD. OF INT'L L REC. DES COURS* 9, 34 (2004).

international (intergovernmental) organization⁸⁰ even though some countries do consider the IOC to be so.⁸¹

The UN General Assembly has long acknowledged the special role of the IOC.⁸² A few years after the agreement with Switzerland, the IOC was admitted as an observer⁸³ and intensified its cooperation with the UN, receiving special recognition by the UN. Its observer status is telling because it places the IOC in a very select company. There are two observer states, the Holy See⁸⁴ and Palestine,⁸⁵ and a long list of observers from international organizations. But the IOC was not placed either of those two categories. Instead, it was placed in the “other” category has only five other entities: the International Chamber of Commerce,⁸⁶ ICRC,⁸⁷ International Federation of Red Cross and Red Crescent Societies,⁸⁸ Inter-Parliamentary Union,⁸⁹ and the Sovereign Military Order of Malta (“SMOM”).⁹⁰ This treatment is clearly far beyond what one would expect for a mere Swiss association and its inclusion in this group suggests that the UNGA views the IOC as being similar to its peers. In April 2014, the IOC signed a

⁸⁰ Burnand, *supra* note 44.

⁸¹ *Id.* (“Reste que, contrairement à d’autres pays, la Suisse ne considère pas le CIO comme une organisation intergouvernementale. ‘Aussi longtemps que ses membres ne seront pas des Etats, le CIO peut difficilement prétendre à un accord de siège avec la Suisse. En outre, la Confédération n’a pas la base légale pour accorder un tel statut’, précise Evelyne Gerber.”) [“However, unlike other countries, Switzerland does not consider the IOC as an intergovernmental organization. ‘As long as its members are not States, the IOC can hardly claim a headquarters agreement with Switzerland. Furthermore, the Confederation does not have the legal basis to grant such a status,’ specifies Evelyne Gerber.”] (strangely the Ministry of Foreign Affairs did not specify which states consider the IOC an international organization).

⁸² Latty, *Le Statut juridique*, *supra* note 5, at 21-23.

⁸³ See G.A. Res. 64/3 (Oct. 19, 2009).

⁸⁴ See G.A. Res. 58/314 (July 16, 2004).

⁸⁵ See G.A. Res. 3237 (XXIX) (Nov. 22, 1974); G.A. Res. 43/160 (Dec. 9, 1988); 43/177 (Dec. 15, 1988); G.A. Res. 52/250 (July 13, 1998); G.A. Res. 67/19 (Dec. 4, 2012); G.A. Res. 73/5 (Oct. 17, 2018).

⁸⁶ See G.A. Res. 71/156 (Dec. 21, 2016).

⁸⁷ See G.A. Res. 45/6 (Oct. 16, 1990).

⁸⁸ See Human Rights Council Res. 49/2, U.N. Doc. A/49/2 (Apr. 13, 2022).

⁸⁹ See G.A. Res. 57/32 (Jan. 20, 2003).

⁹⁰ See G.A. Res. 48/265 (Aug. 30, 1994).

cooperation agreement with the UN⁹¹ and, a few months later, the UNGA issued a resolution recognizing the “independence and autonomy of sport” and the “mission of the International Olympic Committee in leading the Olympic movement.”⁹² The IOC also entered into various Memoranda of Understanding with other organizations,⁹³ *inter alia*, the World Health Organization.⁹⁴

The IOC has continued to be the subject of several cases. In *Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*,⁹⁵ in 2009, the Supreme Court of British Columbia, Canada, heard a claim over gender discrimination in providing for the sport of ski-jumping and non-compliance with Canadian law on discrimination. While the IOC was not a defendant, the Court concluded that the discriminatory decision had been made by the IOC, and the Court could not subject the IOC to Canadian law and order it to alter its decision.⁹⁶ In 2012, yet another case was brought, this time directly against the IOC, by the Gibraltar Olympic Committee (GOC) arguing that it should be recognized as an NOC. In *Gibraltar Olympic Committee v. CIO* (“*GOC v CIO*”), the court dismissed

⁹¹ See *Cooperation with the UN*, INT’L OLYMPIC COMM., <https://olympics.com/ioc/cooperation-with-the-un> (last visited Apr. 14, 2024).

⁹² See G.A. Res. 69/6, ¶ 8 (Oct. 31, 2014) (*Supports the independence and autonomy of sport as well as the mission of the International Olympic Committee in leading the Olympic movement*”).

⁹³ See LATTY, *supra* note 61, at 113, 187; Latty, *Le Statut juridique*, *supra* note 5.

⁹⁴ See *WHO and International Olympic Committee team up to improve health through sport*, WORLD HEALTH ORG. (May 16, 2020), <https://www.who.int/news/item/16-05-2020-who-and-international-olympic-committee-team-up-to-improve-health-through-sport>; *WHO and the International Olympic Committee sign agreement to improve healthy lifestyles*, WORLD HEALTH ORG. (Jan. 7, 2011), <https://www.who.int/news/item/07-01-2011-who-and-the-international-olympic-committee-sign-agreement-to-improve-healthy-lifestyles>.

⁹⁵ See *Sagen v. Vancouver Org. Comm. for the 2010 Olympic & Paralympic Winter Games*, [2009] B.C.S.C. 942 (Can. B.C.).

⁹⁶ See *id.* at 116-17; see also Kris Lines & Jon Heshka, *Ski jumping through Olympic-sized hoops: an analysis of Sagen & Others v Vancouver Organizing Committee (VANOC) for the 2010 Olympic & Paralympic Winter Games*, 4 INT’L SPORTS L. REV. 92 (2009); Margot Young, *The IOC Made Me Do it: Women’s Ski Jumping, VANOC and the 2010 Winter Olympics*, 18 CONST. FORUM 95 (2010).

the claim on the merits.⁹⁷ The GOC appealed the case all the way to the Swiss Federal Tribunal, which ultimately affirmed the dismissal.⁹⁸ From this case, it appears that the judiciary system considered the IOC a Swiss association, not an international organization, though it is perhaps important that the IOC never raised an immunity claim. Seemingly misaligned with its own Foreign Affairs Ministry, the Swiss Federal Tribunal, in the 2012 *GOC v CIO* case, concluded that the IOC is a “non-governmental, non-profit international organization, in the form of an association with legal personality,”⁹⁹ ignoring its “elements of international legal personality.” In 2016, Kuwait brought a case against the IOC when its NOC was banned from the Rio Olympics.¹⁰⁰ Once again, while the case failed on the merits, the IOC did not raise, nor did the court apply, an immunity defense.

II. THE IOC AS A SWISS ASSOCIATION

The typical argument about status is that the IOC is a Swiss association and governed by Switzerland, thus not an international legal person.¹⁰¹ It is registered as such¹⁰² and fulfills the criteria of an NGO.¹⁰³ At first glance, Swiss law would appear to view the IOC as a

⁹⁷ See Tribunal federale [TF] [Federal Supreme Court] Feb. 10, 2012, Gibraltar Olympic Committee v. Comité International Olympique, 5A 21/2011 (Switz.); Latty, *Le Statut juridique*, *supra* note 5.

⁹⁸ Tribunal federale, 5A 21/2011.

⁹⁹ See *id.* (“Statutairement, le CIO est une organisation internationale non gouvernementale, à but non lucratif, à forme d’association dotée de la personnalité juridique, reconnue par le Conseil fédéral et dont le siège est à Lausanne. [“Statutorily, the IOC is a non-governmental, non-profit international organization, in the form of an association with legal personality, recognized by the Federal Council and headquartered in Lausanne.”]).

¹⁰⁰ See Tribunal cantonal de Vaud [Cantonal Court] July 15, 2016, Case No. 28/2016/PHC (Switz.).

¹⁰¹ See Latty, *Le Statut juridique*, *supra* note 5.

¹⁰² See Vedder, *supra* note 45, at 245; Maria Tai Wolff, *Playing by the Rules - A Legal Analysis of the United States Olympic Committee - Soviet Olympic Committee Doping Control Agreement*, 25 STAN. J. INT’L L. 611, 614 (1989).

¹⁰³ See Vedder, *supra* note 45, at 245 (Vedder uses the criteria established by the Union of International Associations to identify the IOC as an NGO).

Swiss NGO¹⁰⁴ and Switzerland clearly does not consider the IOC an international organization with the same status as the UN, WTO, and other international organizations in Geneva.¹⁰⁵ Even the IOC agrees. The current version of the Olympic Charter states that “[t]he IOC is an international non-governmental not-for-profit organization.”¹⁰⁶ The Swiss decree and agreements only exempt the IOC from certain taxes and grant it limited labor privileges.¹⁰⁷ This is far from the expansive privileges and immunities that other international legal persons enjoy. During the negotiations over the Olympic Symbol Treaty, only two states ever mentioned the status of the IOC. Both the USSR and United States took the position that it was an NGO.¹⁰⁸ The Court of Justice of

¹⁰⁴ See CIVIL CODE, art. 60, ¶1 (Switz.); see also Vedder, *supra* note 45, at 245; SCHROEDER, *supra* note 47, at 90.

¹⁰⁵ See Latty, *Le Statut juridique*, *supra* note 5

¹⁰⁶ See International Olympic Committee, Olympic Charter (2023), <https://olympics.com/ioc/olympic-charter> [hereinafter Olympic Charter, 2023]; see also International Olympic Committee, Olympic Charter, Rule 15 ¶ 1 (2021), https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#page=12&_ga=2.160353213.1840670684.1619005637-578193902.1619005637 (“The IOC is an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000.”) [hereinafter Olympic Charter, 2021].

¹⁰⁷ See NAFZIGER, *supra* note 27, at 33; Vedder, *supra* note 45, at 246; Wolff, *supra* note 102, at 614.

¹⁰⁸ See Summary Minutes of the Meetings of the Diplomatic Conference for the Adoption of a Treaty on the Protection of the Olympic Symbol, 1st mtg., Thurs. Sept. 24, 1981, reprinted in *Records of the Nairobi Diplomatic Conference for the Adoption of a Treaty on the Protection of the Olympic Symbol* at 76, ¶ 33.1 (“Mr. Zubarev (Soviet Union) said that his country shared the concern of the International Olympic Committee (IOC) as to the use of the Olympic symbol for commercial purposes. As a non-governmental organization, the IOC had no legal means to ensure protection for its symbol under the Paris Convention on the Protection of Industrial Property”); Summary Minutes of the Meetings of the Diplomatic Conference for the Adoption of a Treaty on the Protection of the Olympic Symbol, 2nd mtg., Thurs. Sept. 24, 1981, reprinted in *Records of the Nairobi Diplomatic Conference for the Adoption of a Treaty on the Protection of the Olympic Symbol* at 85, ¶ 75.1-75.2 (“Mr. Kirk (United States of America) . . . His Delegation’s concern was related to the very principle of submitting the State to the control of a non-governmental organization. It wondered whether it should be the NOC and not the IOC which should have control of the licensing and use of the Olympic symbol.”)

the EU has agreed that the IOC is an “undertaking”¹⁰⁹ in terms of EU law. This argument makes sense. After all, the IOC was founded by private persons, not states or international organizations,¹¹⁰ and, according to the International Court of Justice (ICJ), a private corporation cannot have international legal personality.¹¹¹

But this argument is difficult to reconcile with the *de facto* operations of the Committee. The IOC is far more than a mere Swiss NGO. The Committee’s functions have been described as “quasi-governmental.”¹¹² It cooperates with state governments,¹¹³ arguing that such cooperation can only be undertaken in a manner in which its neutrality is not compromised.¹¹⁴ The IOC has asserted that it is

¹⁰⁹ See Case T-313/02, *Meca-Medina & Majcen v. Commission of the European Communities*, Judgment, 2004 E.C.R. II-03291, *aff’d*, Case C-519/04 P, *Meca-Medina & Majcen v. Commission of the European Communities*, Judgment, 2006 E.C.R. I-06991, ¶ 38.

¹¹⁰ See BARTLETT ET AL., *supra* note 3, at 678; Economic and Social Council Res. 288 (X) (Feb. 27, 1950); E.S.C. Res.1296 (XLIV) (May 23, 1968); Vedder, note 45, at 245.

¹¹¹ See *Anglo-Iranian Oil Co. (U.K. v. Iran)*, Judgment, 1952 I.C.J. 93, at 103, 112 (July 22).

¹¹² See Vedder, *supra* note 45, at 256.

¹¹³ See Olympic Charter, 2021, *supra* note 106 at Rule 2, Rule 27 ¶ 5.

¹¹⁴ See *id.* at ¶ 5; but see US State Department, Cable No. 1979STATE002524_e (1979 January 4) ¶ 1-2, 7 (“Washington Post carried following story . . . concerning RFE/RL [Radio Free Europe/Radio Liberty] accreditation to 1980 Summer Olympic Games in Moscow: . . . “Olympic radio ban threatened – The Soviet Olympic Committee intends trying to bar the United States-supported Radio Free Europe and Radio Liberty from covering the 1980 Games in Moscow, the Soviet Sports Minister said yesterday . . . The IOC banned Radio Free Europe from the 1976 Winter Olympics in Innsbruck, Austria, but issued credentials for both it and Radio Liberty for the Games that Summer in Munich.”) (original entirely in uppercase).

politically neutral,¹¹⁵ although this view seems hopelessly naïve.¹¹⁶ While the IOC's international activities are international and somewhat non-governmental, it is critical to note that the IOC is sometimes quite embedded in governmental activities. For example, the IOC funds National Olympic committees (NOCs) which have often juridical entities within domestic legal systems, but in some cases, the NOC is a governmental entity.¹¹⁷ It could simply be constituted as a department of the responsible sports ministry.¹¹⁸ In this manner, the IOC sometimes directly funds activities of state government ministries.¹¹⁹ The IOC does not lodge complaints or claims against states through the offices of Switzerland, as would be typical of a Swiss association, but rather directly contacts the state, for example, when a

¹¹⁵ See Olympic Charter, 2021, *supra* note 106, at Fundamental Principles of Olympism ¶ 5 (“Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall apply political neutrality.”); *id.* at Rule 2 (“The mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement. The IOC’s role is: ... to take action to strengthen the unity of the Olympic Movement, to protect its independence, to maintain and promote its political neutrality and to preserve the autonomy of sport”); Arbitration CAS 2014/A/3776, Gibraltar Football Association (GFA) v. Fédération Internationale de Football Association (FIFA) ¶ 6, 8, 9 (Apr. 27, 2016); *but see* UNGA, Consensus Res. *Building a peaceful and better world through sport and the Olympic ideal*, UN Doc. A/74/L.18 (26 November 2019) ¶ 1 (“Urges Member States to observe the Olympic Truce individually and collectively”); *UN Assembly calls on all States to observe Olympic Truce throughout Tokyo Summer Games*, UN NEWS (Dec. 9, 2019), <https://news.un.org/en/story/2019/12/1053101>.

¹¹⁶ See Peter J. Spiro, *The End of Olympic Nationality*, in ALLEGIANCE AND IDENTITY IN A GLOBALISED WORLD 6 (Kim Rubenstein ed., 2012) (“In the Cold War context, especially, the Games supplied the terrain for a kind of surrogate warfare.”).

¹¹⁷ Memorandum from the World Intellectual Property Organization, Nairobi Treaty on the Protection of the Olympic Symbol ¶ 18 (Dec. 1, 1980) *reprinted in* Records of the Nairobi Diplomatic Conference, 1981 WIPO Publ. No. 350(E) (1984), https://tind.wipo.int/record/28771/files/wipo_pub_350.pdf.

¹¹⁸ See *id.* (“In many countries, particularly in most of the developing countries, the role of the National Olympic Committee is assumed by the Government itself (for example, the Ministry responsible for sports matters). That is why the draft Treaty speaks of ‘the Government or the National Olympic Committee [of a given State]’”)

¹¹⁹ See *id.* (“[Article 3 of the Olympic Symbol Treaty] serves the purpose described above (see paragraph 8) as that of ‘inducing’ the International Olympic Committee to share *with the Government* or the National Olympic Committee of the State party to the Treaty the revenues which the International Olympic Committee derives from licensing . . . ” (emphasis added)).

state fails to honor its Olympic hosting agreement with the IOC.¹²⁰ It has also been invited to directly intervene before the UN Security Council to advocate for athletes from sanctioned states to be permitted to attend the Olympics.¹²¹

The IOC's view in the Olympic Charter that it is "an international non-governmental not-for-profit organization,"¹²² must be strongly conditioned. Indeed, it takes that position, but does so as "recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000."¹²³ This was the same agreement wherein Switzerland acknowledged that it had "elements of international legal personality." Thus, it must be understood to view itself as an international NGO with elements of international legal personality, with the agreement of Switzerland.

It has been argued that the Swiss decree and agreement should not carry much weight. The statement that the IOC demonstrated "elements of international legal personality" is merely the view of Switzerland and, as Vedder argues, one state cannot grant international legal personality unilaterally.¹²⁴ But it is important to note that Switzerland did not purport to grant personality in the agreement, but to recognize it and treat it as an association within Switzerland. In addition, this view of Switzerland appears to be supported by the practice of other states.

¹²⁰ See, e.g., James A. Nafziger & Andrew Strenk, *The Political Uses and Abuses of Sports*, 10 CONN. L. REV. 266 (1978); Latty, *Le Statut juridique*, *supra* note 5.

¹²¹ See Max Gounelle, *Droit international du sport [Droit international du sport]*, 22 JURISPORT: LA REVUE JURIDIQUE ET ÉCONOMIQUE DU SPORT 87 (1992); LATTY, *supra* note 61, at 129.

¹²² See Olympic Charter, 2023, *supra* note 106; Olympic Charter, 2021, *supra* note 106, at Rule 15 ¶ 1 ("The IOC is an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000.").

¹²³ *Id.*

¹²⁴ See MESTRE, *supra* note 4, at 41 ("There seems to be no doubt of the fact that the legal recognition of the IOC and the privileges granted to it, having been conferred unilaterally by the Swiss Federal Council, which reinforces the conclusion that the IOC is not a *subject of public international law*." (citing Fernando Xarepe Silveiro, *O Empréstimo Internacional de Futebolistas Profissionais*, in ESTUDOS DE DIREITO DESPORTIVO 121 (2002)); Vedder, *supra* note 45, at 245.

As for the argument over privileges and immunities, this is also not determinative. Swiss and other courts have indeed exercised jurisdiction over the IOC,¹²⁵ yet at the same time, they have taken a hands-off approach to oversight, never interfering in its governance. It is also important to observe that holding immunity is not a test for international legal personality. Indeed, governmental missions and international organizations have certain privileges and immunities,¹²⁶ but this does not mean that they are free to disobey the laws of Switzerland. The laws apply to them, and they are only immune from legal enforcement of violations.¹²⁷ There are only a few limited provisions where they are truly privileged to have the law not apply.¹²⁸ Thus, the laws of Switzerland can be enforced in the *Palais des Nations*, should the UN permit it, because they apply there.¹²⁹ In addition, the precise degree and scope of immunities can vary. Each international organization headquarters agreement varies slightly from each other. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) was subject to VAT in The Netherlands¹³⁰ though

¹²⁵ See Antonio Rigozzi, *Challenging Awards of the Court of Arbitration for Sport*, 1 J. INT'L DISP. SETTLEMENT 217 (2010).

¹²⁶ See, e.g., U.N. Charter art. 105, ¶ 1.

¹²⁷ See *Loi fédérale sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordées par la Suisse en tant qu'Etat hôte* [Federal Act on the privileges, immunities, and facilities, as well as on the financial assistance granted by Switzerland as a host State], Recueil officiel 2022 572, arts. 3a-j (Nov. 1, 2022) (noting the distinction among (1) inviolability of the person, premises, etc.; (2) immunity from jurisdiction and execution; and (3) exemption from taxes, customs duties, etc.).

¹²⁸ See *id.*

¹²⁹ See *Police stage attack exercise at Palais des Nations*, SWISSINFO.CH (Aug. 26, 2015, 10:47 AM), <https://www.swissinfo.ch/eng/politics/police-stage-attack-exercise-at-palais-des-nations/41624938>.

¹³⁰ See Agreement Between the United Nations and the Kingdom of The Netherlands Concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian law Committed in the Territory of the Former Yugoslavia Since 1991, May 27, 1994.

the ICJ is not.¹³¹ And immunity could very well be contingent,¹³² depending on the needs of the organization.¹³³ In a number of cases, states have been able to exercise jurisdiction over certain questions in relation to international organizations. For example, in *Eckhardt v. European Organization for the Safety of Air Navigation (Eurocontrol)* (No. 2), the court could hear the dispute against the organization because the constitution of Eurocontrol made provision for the assumption of jurisdiction by national courts.¹³⁴ And of course, any entity benefitting from privileges and immunities can always waive them. Thus, the precise types and scope of exemptions for the IOC, specifically taxation and labor law, seem entirely appropriate, as does its willful cooperation with the occasional legal claim against it and potentially in keeping with its international status.

The IOC also appears to view the Olympic Charter and rules governing the IOC as a quasi-legal order. The Court of Arbitration for Sport (CAS or TAS "*Tribunal arbitral du sport*") has referred to the Charter as simply *sui generis*, though it has applied rules and principles from international law to it.¹³⁵ Curiously, the Olympic Charter refers to itself as a "constitutional instrument"¹³⁶ that serves as the "statutes"¹³⁷ for the IOC and grants "rights and obligations,"¹³⁸ all of

¹³¹ See International Court of Justice, Letter from the President of the International Court of Justice [Guerrero] to the Minister for Foreign Affairs of The Netherlands, Annex: General Principles (June 26, 1946), <https://icj-cij.org/other-texts/letter-from-the-president>.

¹³² See *Waite & Kennedy v. Germ.*, Appl. No. 26083/94 Eur. Ct. H.R. (1999); *Rendall-Speranza v. Nassim*, 932 F. Supp. 19 (D.D.C. 1996).

¹³³ See *Mukoro v. Eur. Bank for Reconstr. & Develop.* [1994] UKEAT.

¹³⁴ See *Eckhardt v. Eur. Org. for the Safety of Air Nav. (Eurocontrol)* (No. 2) [Dist. Ct. Maastricht, Netherlands] Jan. 12, 1984, *reprinted in* 16 NETHS. YB INT'L L. 464 (1984); 94 I.L.R. 331.

¹³⁵ See Arbitration CAS 00/001 [*ad hoc* Div. (O.G. Sydney)], U.S. Olympic Comm. (USOC) & USA Canoe/Kayak/Int'l Olympic Comm. (IOC) ¶¶ 16, 19, 21-22. (Sept. 13, 2000).

¹³⁶ See Olympic Charter, 2021, *supra* note 106, at Introduction ¶ a ("The Olympic Charter, as a basic instrument of a constitutional nature, sets forth and recalls the Fundamental Principles and essential values of Olympism.").

¹³⁷ See *id.* at Introduction ¶ b ("The Olympic Charter also serves as statutes for the International Olympic Committee.").

¹³⁸ See *id.* at Introduction ¶ c ("In addition, the Olympic Charter defines the main reciprocal rights and obligations of the three main constituents of the Olympic

which suggest some prescribed legal status. The CAS has interpreted the Olympic Charter, as well as NOC and International Sports Federation (IF) rules, as if they were legal instruments, relying on the ordinary meaning of words in the text¹³⁹ and the intentions of the drafters,¹⁴⁰ and prior practice by the IOC.¹⁴¹ The CAS itself has been recognized as a legal arbitration tribunal under Swiss law.¹⁴² In fact, one former judge on the International Court of Justice has served as arbitrator for the CAS, as have some prominent international arbitration practitioners.¹⁴³ It has stated that it will interpret these rules in a manner so as to not disadvantage the athlete,¹⁴⁴ and that it should not be too literal.¹⁴⁵ That being said, it has reached conclusions that it admitted imposed considerable hardship on athletes. The closest comparison to the Olympic Charter would therefore be the constitutive instruments of international organizations.

Movement, namely the International Olympic Committee, the International Federations and the National Olympic Committees ...”).

¹³⁹ See Arbitration CAS 2010/A/2071, *Irish Football Assoc. (IFA) v. Football Assoc. of Ireland (FAI)*, Kearns & Fédération Internationale de Football Assoc. (FIFA) ¶ 20 (Sept. 27, 2010) (operative part issued on 22 July 2010); Arbitration CAS 2007/A/1377, *Rinaldi v. Fédération ‘leInt’le de Natation (FINA)* ¶ 21 (Nov. 26, 2007); Arbitration CAS 00/005 [*ad hoc* Div. (O.G. Sydney)], *Perez / Int’l Olympic Comm. (IOC)* ¶ 30 (Sept. 19, 2000).

¹⁴⁰ See *IFA v. FIFA*, CAS 2010/A/2071 at ¶ 20.

¹⁴¹ See *GFA v. FIFA*, CAS 2014/A/3776 at ¶ 302.

¹⁴² See Tribunal fédérale [Swiss Federal Tribunal] Mar. 15, 1993, *Elmar Gundel v. Fédération Equestre Internationale (FEI)*, CAS 92/A/63 Entscheidungen des schweizerischen Bundesgerichts [BGE] 119, 271 (Switz.); see also Bundesgerichtshof [BGH] [Federal Court of Justice] Jun. 7, 2016, KZR 6/15, Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] ¶ (Ger.).

¹⁴³ See e.g. Arbitration CAS 94/132, *Puerto Rico Amateur Baseball Federation (PRABF) v. USA Baseball (USAB)* (Mar. 15, 1996); Arbitration CAS 94/123, *Fédération Internationale de Basketball (FIBA) v. W. & Brandt Hagen e. V.* (Sept. 12, 1994) (note that the body governing the CAS, the International Council of Arbitration for Sport (ICAS) has two sitting ICJ judges and a former judge on the European Court of Human Rights as members); see *Media Release: Governing Body of the Court of Arbitration for Sport (CAS): New Members Appointed*, INT’L COUNCIL OF ARB. FOR SPORT (Sept. 6, 2018), https://www.tascas.org/fileadmin/user_upload/2018.09.06_new_ICAS.pdf (documenting terms office beginning 1 January 2019 for Patrick Robinson, Hanqin Xue, and Elisabeth Steiner, among others).

¹⁴⁴ See Arbitration CAS 98/215, *International Baseball Ass’n (IBA)* ¶ 24-25 (Jan. 4, 1999); *Perez/IOC*, CAS 00/005 at ¶ 32.

¹⁴⁵ See *Perez/IOC*, CAS 00/005 at ¶ 31.

Although the IOC is, in principle subject to the laws of Switzerland, it is nonetheless somewhat liberated from them at the same time.¹⁴⁶ It is, in most real sense, largely independent and autonomous of any country's laws.¹⁴⁷ The Committee, itself asserts as much.¹⁴⁸ Certainly the IOC is the "supreme authority"¹⁴⁹ governing the Olympics. But also, the IOC Board claims exclusive competence over disputes under the Olympic Charter,¹⁵⁰ unless competence has been otherwise delegated to the Court of Arbitration for Sport,¹⁵¹ which has been largely respected as the cases mentioned above reveal. The Charter permits no review or appeal of the IOC's decisions.¹⁵² Nafziger concludes that the IOC is clearly "intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an

¹⁴⁶ See Latty, *Le Statut juridique*, *supra* note 5; Luc Silance, *Interaction of the Rules in Sports Law and the Laws and Treaties Made by Public Authorities*, OLYMPIC REV. 619, 622 (1977).

¹⁴⁷ See Vedder, *supra* note 45, at 256-57.

¹⁴⁸ See Olympic Charter, 2021, *supra* note 106, at Fundamental Principles of Olympism ¶ 5; *id.* at Rule 2 ("The mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement. The IOC's role is: . . . 5 to take action to strengthen the unity of the Olympic Movement, to protect its independence, to maintain and promote its political neutrality and to preserve the autonomy of sport"); *Id.* at Rule 27 ¶ 6; Int'l Olympic Comm., *IOC Code of Ethics*, in ETHICS art. 1 (2024) ("Respect for the universal fundamental ethical principles is the foundation of Olympism. These include: . . . 1.3 Maintaining harmonious relations with state authorities, while respecting the principle of autonomy as set out in the Olympic Charter").

¹⁴⁹ See Olympic Charter, 2021, *supra* note 106 at Rule 1 ¶ 1 ("Under the supreme authority and leadership of the International Olympic Committee, the Olympic Movement encompasses organisations, athletes and other persons who agree to be guided by the Olympic Charter."); see *Id.*, *supra* note 106, at Fundamental Principles of Olympism ¶ 3 ("The Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC...").

¹⁵⁰ See *id.* at Rule 58 ("The authority of last resort on any question concerning the Olympic Games rests with the IOC.").

¹⁵¹ See *id.* at Rule 61 ¶ 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).").

¹⁵² See *id.* at Rule 1 ¶ 4 ("Any person or organisation belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC.").

international plane”¹⁵³ Following his multi-year investigation into international sports organizations and the operation of the IOC, Thomas Kistner concluded that, while formally a Swiss association, the IOC is a *de facto*, almost diplomatic, international entity that negotiates directly with governments and international organizations and is largely unbound by domestic law.¹⁵⁴ In sum, despite formalities, it is certainly treated as if it has international legal personality.¹⁵⁵

III. THE IOC AS AN INTERNATIONAL ORGANIZATION

But this international legal personality discussed above does not mean that the IOC is an international organization.

The IOC closely resembles an international organization – functionally – in many important respects.¹⁵⁶ This Article has already mentioned its extent of privileges and immunities, which are impressive, but not as extensive as those typically enjoyed by state missions and international organizations. What is murkier is whether the practice of the IOC¹⁵⁷ demonstrates that it is exercising powers of an international legal person. Certainly, one could argue that its agreements and claims are founded on international law. Nafziger, as mentioned above, concludes that can only be understood that way.¹⁵⁸ Yet, in undertaking its activities, including agreements and claims, the IOC does not invoke international law and, as Nafziger notes, those acts only evidence international legal personality, not status as an international organization. For example, the IOC does sign agreements

¹⁵³ See NAFZIGER *supra* note 28, at 33; Wolff *supra* note 102, at 614.

¹⁵⁴ See Thomas Kistner, *So korrupt ist das IOC [That's how corrupt the IOC is]*, *CICERO* (June 2008), <https://www.cicero.de/weltbuhne/so-korrupt-ist-das-ioc/38707> (“Denn dieser Privatverein nach Schweizer Recht ist de facto ein globaler Konzern, verhandelt mit Staaten und Organisationen wie den UN und besitzt fast diplomatischen Status, unbehelligt von Strafgesetzen oder internationalen Konventionen [“This private association under Swiss law is de facto a global corporation, negotiates with states and organizations such as the UN and has almost diplomatic status, unhindered by criminal laws or international conventions.”])

¹⁵⁵ See Wolff, *supra* note 102, at 614.

¹⁵⁶ See Ettinger *supra* note 32, at 104; See also Nairobi Treaty, *supra* note 50; William Thomas Worster, *Relative International Legal Personality of Non-State Actors*, 42 *BROOK. J. OF INT'L L.* 247 (2016).

¹⁵⁷ See Wolff, *supra* note 102, at 614.

¹⁵⁸ See NAFZIGER, *supra* note 28, at 32; Wolff, *supra* note 102, at 614.

with international organizations,¹⁵⁹ though those same international organizations also sign agreements with sports federations that are clearly not international legal persons.¹⁶⁰

Wolff has argued that, as an international legal person, the IOC would necessarily enjoy a range of international powers, though this is not entirely correct. The IOC would have the capacity for international powers and would enjoy those that states explicitly, implicitly, or presumptively permitted it to enjoy.¹⁶¹ In this regard, we can refer to the powers of international organizations. Indeed, exercising treaty making power is very persuasive that an entity is an international legal person.¹⁶² But, while capable of exercising a range of powers, organizations are only permitted those powers that their founding states granted to them.¹⁶³ Thus, the IOC would not necessarily function in a manner identical to other international legal persons.

The fact that IOC is not formally designated as an international organization by its founders is not determinative. Many international organizations are not so designed, including the UN¹⁶⁴ and for a long time, the EU.¹⁶⁵ Other organizations remain unclear as to their

¹⁵⁹ See *The IOC signs a Cooperation Agreement with UNESCO*, INT'L OLYMPIC COMM. (Jan. 19, 2004), <https://olympics.com/ioc/news/the-ioc-signs-a-cooperation-agreement-with-unesco>; *UN Women signs partnership agreement with the International Olympic Committee to advance gender equality*, UN WOMEN (Aug. 23, 2012), <https://www.unwomen.org/en/news/stories/2012/8/un-women-signs-partnership-agreement-with-the-international-olympic-committee-to-advance-gender-equa>.

¹⁶⁰ See *Press Release: FIFA and UN Women Sign First-ever Memorandum of Understanding*, UN WOMEN (June 7, 2019), <https://www.unwomen.org/en/news/stories/2019/6/press-release-fifa-and-un-women-sign-mou>.

¹⁶¹ See MALCOLM SHAW, *INTERNATIONAL LAW* 124, 614-17 (1986).

¹⁶² See, e.g., Vienna Convention on the Law of Treaties Between States and International Organizations, Mar. 21, 1986, U.N. Doc A/CONF.129/15 (not in force) (VCLT IOs); see generally PHILIPPE SANDS & PIERRE KLEIN, *BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS* 474-536 (6th ed., 2009) (For a discussion of international organizations and international legal personality more generally.).

¹⁶³ See, e.g., VCLT IOs, *supra* note 162, at art. 6.

¹⁶⁴ See *Reparation of Injuries Suffered in Service of the U.N.*, Advisory Opinion, 1949 I.C.J. 174, 178-79 (Apr. 11).

¹⁶⁵ See, e.g., Case C-6/64, *Costa v. E.N.E.L.*, 1964 E.C.R. 587, 593.

status,¹⁶⁶ such as treaty body Secretariats.¹⁶⁷ Yet, all of these entities are formed by the explicit or implicit agreement of states or other international legal persons with those entities as members.¹⁶⁸

In order to constitute an international organization, the entity must be created by other international legal persons.¹⁶⁹ The IOC clearly fails on this point.¹⁷⁰ However, this is not to say that an international organization cannot come into being through evolution over time. The evolving emergence of the informal GATT international organization that preceded the WTO is a case in point.¹⁷¹ Yet, in that case, and in all others, there is always some form of agreement by other international legal persons to the emergence of the international organization.¹⁷² In addition, while its membership need not be exclusively international legal persons, its membership must at least include international legal persons. Here again, the IOC fails.¹⁷³

Thus, the IOC resembles an international organization far more than a Swiss association, yet it still slightly misses the mark. Therefore, the best conclusion is that the IOC is not an international organization.¹⁷⁴

¹⁶⁶ See generally Jan Wouters & Sven Van Kerckhoven, *The OECD and the G20: An Ever Closer Relationship?*, 43 GEO. WASH. INT'L L. REV. 345, 346 (2011); see also Tarcisio Gazzini, *NATO's Role in the Collective Security System*, 8 J. CONFLICT & SEC. L. 231, 241 (2003); see also Jan Klabbers, *Institutional Ambivalence by Design: Soft Organizations in International Law*, 70 NORDIC J. INT'L L. 403, 406 (2001); see also Memorandum of Understanding on Co-operation Between the Commonwealth Secretariat and the Office of the United Nations High Commissioner for Human Rights, Dec. 1, 1998, 2056 U.N.T.S. at ¶ 1.3.

¹⁶⁷ See William Thomas Worster, *The Arms Trade Treaty Regime in International Institutional Law*, 36 U. PENN. J. INT'L L. 995, 1004-05 (2015).

¹⁶⁸ See, e.g., *Reparation of Injuries*, 1949 I.C.J. 174, at 178-79.

¹⁶⁹ See HENRY G. SCHERMERS & NIELS M. BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW* 28, § 36 (4th rev. ed., 2003).

¹⁷⁰ See Vedder, *supra* note 45, at 246-47; see also Wolff, *supra* note 102, at 614.

¹⁷¹ See, e.g., *Differential and More Favorable Treatment Reciprocity and Fuller Participation of Developing Countries*, L/4903 (Nov. 28, 1979), GATT B.I.S.D. (26th Supp.) at 191-94 (1980) (describing normative evolution of GATT); see also Worster, *supra* note 167, at 1013.

¹⁷² SCHERMERS & BLOKKER, *supra* note 169, at § 34-43.

¹⁷³ See Olympic Charter, 2021, *supra* note 106, at art. 15-16; see also NAFZIGER, *supra* note 27, at 26; see also Wolff, *supra* note 102, at 614.

¹⁷⁴ See generally JOHANNES WILHELMUS SCHNEIDER, *TREATY-MAKING POWER OF INTERNATIONAL ORGANIZATIONS* 99 (1959); see also Vedder, *supra* note 45, at 234

IV. THE IOC AS AN "OTHER" INTERNATIONAL LEGAL PERSON

However, the IOC need not be an international organization to enjoy international legal personality. There is an argument that the IOC is still a *de facto* international legal person despite not being a state or an international organization.

The law on international legal personality focuses on a functional capacity for international rights and obligations.¹⁷⁵ Thus, how the entity is treated by the international community.¹⁷⁶ Some of these persons are not states or international organizations.¹⁷⁷ Of course, the Holy See is one of the most prominent examples of a non-state, non-territorial entity that enjoys international legal person personality.¹⁷⁸ The SMOM is another.¹⁷⁹ In addition, a few exceptional organizations, founded as private non-governmental organizations, have received some degree of international legal personality, such as the International Air Transport Association,¹⁸⁰ Global Alliance for

(citing Karl Doebring, *The All-German Olympic Team as a Question of Law* (unpublished) describing the legal opinion rendered at the request of the National Olympic Committee for Germany 1965).

¹⁷⁵ See ROLAND PORTMANN, *LEGAL PERSONALITY IN INTERNATIONAL LAW* 9 (2010); see also Maurice Mendelson, *The Definition of 'International Organization' in the International Law Commission's Current Project on the Responsibility of International Organizations*, in *INTERNATIONAL RESPONSIBILITY TODAY: ESSAYS IN MEMORY OF OSCAR SCHACHTER* 371-72 (Maurizio Ragazzi ed., 2005); see also William Thomas Worster, *Functional Statehood in Contemporary International Law*, 46 *BROOK. J. INT'L L.* 39, 42 (2020).

¹⁷⁶ JANNE ELISABETH NIJMAN, *THE CONCEPT OF INTERNATIONAL LEGAL PERSONALITY: AN INQUIRY INTO THE HISTORY AND THEORY OF INTERNATIONAL LAW* 3 (2004); see also Jan Klabbers, *The Emergence of Functionalism in International Institutional Law: Colonial Inspirations*, 25 *EUR. J. INT'L L.* 645, 645 (2015).

¹⁷⁷ See Worster, *supra* note 156, at 207-08.

¹⁷⁸ See William Thomas Worster, *The Human Rights Obligations of the Holy See Under the Convention on the Rights of the Child*, 31 *DUKE. J. COMPAR. & INT'L L.* 351, 369-77 (2021) (distinguishing between the Holy See, which is a non-territorial international legal person, and the Vatican City State, which is a territorial state, of which the Holy See is the sovereign).

¹⁷⁹ See Worster, *supra* note 156, at 257.

¹⁸⁰ See *About Us*, INT'L AIR TRANSP. ASS'N, <http://www.iata.org/about/pages/index.aspx> (last visited Apr. 14, 2024); Accord entre le Conseil fédéral suisse et l'Association du Transport aérien international (IATA) pour régler le statut fiscal des

Vaccines and Immunization,¹⁸¹ and the Global Fund to Fight AIDS, Tuberculosis and Malaria,¹⁸² though states have taken a strong role in forming most of these entities.

However, states need not be involved. A private entity could enjoy international personality.¹⁸³ While it is true that the ICJ, in the *Anglo-Iranian Oil Company* case, concluded that the underlying agreement in the case was not a treaty because it was constituted by a private corporation, the Court did not go so far as to argue that a private corporation could never constitute a treaty with a state.¹⁸⁴ It was simply that the extensive involvement of the UK Government in negotiating the agreement between the Anglo-Iranian Oil Company and Iran was not sufficient to transform the UK into a party to the agreement, and, since the Anglo-Iranian Oil Company did not have capacity to enter into a treaty – and even if it did, the ICJ would not have jurisdiction over such a dispute – the case was dismissed. Thus, the Court did not completely exclude the possibility for a corporation to be vested with treaty-making capacity in general. In fact, history offers

services et du personnel de cette organisation en Suisse [Agreement between the Swiss Federal Council and the International Air Transport Association (IATA) to regulate the tax status of services and of the staff of this organization in Switzerland] (Dec. 19, 1997), https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1989/1505_1505_1505/19971219/fr/pdf-a/fedlex-data-admin-ch-eli-cc-1989-1505_1505_1505-19971219-fr-pdf-a.pdf; *See* Tribunal federale [TF] [Federal Supreme Court] 4 October 1978, *Jenni et al. v. Conseil d'Etat of the Canton of Geneva*, 75 I.L.R. 99 (Switz.).

¹⁸¹ *See Our Alliance*, GAVI, <https://www.gavi.org/our-alliance> (last visited Apr. 14, 2024); Davinia Abdul Aziz, *Privileges and Immunities of Global Public-Private Partnerships: A Case Study of the Global Fund to Fight AIDS*, (Tuberculosis and Malaria Institute for International Law and Justice Emerging Scholars, Paper No. 14, 2010); Gian Luca Burci, *Public/Private Partnerships in the Public Health Sector*, 6 INT'L ORG. L. REV. 359, 380 (2009).

¹⁸² *See* G.A. Res. 64/122 (Dec. 16, 2009) (granting the Global Fund observer status); Agreement Between the Swiss Federal Council and the Global Fund to Fight AIDS, Tuberculosis and Malaria in View of Determining the Legal Status of the Global Fund in Switzerland (June 23, 2009), https://www.theglobalfund.org/media/8551/core_headquarters_agreement_en.pdf.

¹⁸³ *See* James A.R. Nafziger, *The Future of International Law in its Administrative Mode*, 40 DENV. J. INT'L L. & POL'Y 64 (2011).

¹⁸⁴ *See* *Anglo-Iranian Oil Co. (U.K. v. Iran)*, Judgment, 1952 I.C.J. 93, 112 (July 22).

several examples of treaties between corporations and states, a practice now largely abandoned.¹⁸⁵

This is not mere theoretical speculation. In the *Reineccius v. Bank for International Settlements* case,¹⁸⁶ an arbitral tribunal administered by the Permanent Court Arbitration concluded that the Bank for International Settlements (BIS) was an international legal person, despite it being constituted as a banking corporation with shares. The tribunal reached this conclusion because the parties had created the bank by treaty¹⁸⁷ and charged it with a particularly urgent public international function.¹⁸⁸ Other international instruments recognize the Bank's international personality.¹⁸⁹ The Swiss Federal Council, the only authority under which the bank could conceivably be governed, also recognized it as such.¹⁹⁰ Its decree notes that the Bank is a corporation under Swiss law,¹⁹¹ but agrees that it will not interfere with the Bank's operations.¹⁹² It notes that Switzerland will not seek to amend the Bank's Charter without consent of the other parties,¹⁹³ but that the other parties will not amend its Charter in such a way to cause a burden to Switzerland.¹⁹⁴ Regardless of these

¹⁸⁵ See, e.g., Agreement Between the British South Africa Co. and Portugal Amending the Agreement of 28 August 1913 Relative to the Recruitment of Native Labourers for Rhodesia, July 4, 1914, 220 Consol. T.S. 152 [hereinafter British South Africa Co.-Portugal Agreement, 1914].

¹⁸⁶ See *Reineccius et al. v. Bank for International Settlements, et al.*, 43 ILM 893 (Perm. Ct. Arb. 2004) (Partial Award on the Lawfulness of the Recall of the Privately Held Shares on 8 January 2001 and the Applicable Standards for Valuation of those Shares).

¹⁸⁷ See *id.*

¹⁸⁸ See *id.* at ¶ 113-14.

¹⁸⁹ See *id.* at ¶ 115 (citing Headquarters Agreement with Switzerland of 1987, Host Country Agreement Between the Bank and the People's Republic of China of 1998, and the Host Country Agreement with Mexico of 2002).

¹⁹⁰ See *id.*

¹⁹¹ See *id.* at ¶ 109 ("La charte octroie à la banque la personnalité juridique du droit Suisse ["The charter grants the bank legal personality under Swiss law"]).

¹⁹² See *id.* at ¶ 110.

¹⁹³ See *id.* at ¶ 109 ("la Suisse s'engage à promulguer la charte constitutive et à ne pas la modifier sans le consentement des Etats signataires" ["Switzerland undertakes to promulgate the constitutive charter and not to modify it without the consent of the States signatories"]).

¹⁹⁴ See *id.* at ¶ 110 ("... the Swiss commitment not to apply Swiss law in particular to the operations and activities of the Bank was matched by a commitment by the treaty

particular considerations, the critical, overarching context is that “the rather complicated manner in which the Bank was established must be seen in light of the stage of development of international law in 1930.”¹⁹⁵ Remarkably enough, the tribunal in *Reineccius* expressly acknowledged that the BIS had been set up by the treaty as a Swiss corporation, though one not beholden to Swiss law.¹⁹⁶ That being said, the bank’s unique status did not completely exclude Swiss law, which would be applied for appropriate purposes, such as the rules of procedure for holding meetings, from which it was not exempted due to its international nature.¹⁹⁷

Aside from the BIS, the ICRC is perhaps an even more recognizable entity in this category of private entities with international legal personality.¹⁹⁸ Both Switzerland¹⁹⁹ and the international community recognize the ICRC as having this status.²⁰⁰

partners establishing the Bank not to change the Statutes in ways that would impose upon Switzerland a different regime, without Swiss concurrence”).

¹⁹⁵ See *id.* at ¶ 105.

¹⁹⁶ See *id.* at ¶ 108 (“The granting of the Charter by Switzerland did not thereby subordinate the Bank to Swiss law . . . The Bank is chartered as a company limited by shares under Swiss law, while it is registered as an ‘Internationale Organisation mit eigenem Rechtsstatus’ in the ‘Handelsregister des Kantons Basel-Stadt Hauptregister’”).

¹⁹⁷ See *id.* at ¶ 106 (“This complicated system does not exclude the applicability of Swiss law for formalities, for instance as to the procedure for general meetings of the Bank, where this is not in conflict with the relevant instruments of international law.”).

¹⁹⁸ See Int’l Comm. of the Red Cross, *Conclusion of a Headquarters Agreement Between the International Committee of the Red Cross and the Swiss Confederation*, 293 INT’L REV. OF THE RED CROSS 150, 150-51 (Apr. 1993), <https://international-review.icrc.org/sites/default/files/S0020860400071564a.pdf>; Prosecutor v. Simić et al., Case No. IT-95-9-PT, Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, ¶ 78-79 (Int’l Crim. Trib. for the former Yugoslavia July 27, 1999); GEORGES WILLEMIN, ROGER HEACOCK, & JACQUES FREYMOND, INTERNATIONAL ORGANIZATION AND THE EVOLUTION OF WORLD SOCIETY: THE INTERNATIONAL COMMITTEE OF THE RED CROSS 199, 204 (1984).

¹⁹⁹ See Int’l Comm. of the Red Cross, *supra* note 198.

²⁰⁰ See, e.g., Protocol Amending the Agreement on the Relations Between the International Commission for the International Tracing Service and the International Committee of the Red Cross, May 16, 2006, T.S. No. 20 (including participation of Belgium, France, Germany, Israel, Italy, Luxembourg, Netherlands, United Kingdom of Great Britain and Northern Ireland, United States, and the ICRC).

For example, in the *Prosecutor v Simić* case,²⁰¹ before the ICTY, the Tribunal had to determine whether the ICRC could block one of its employees from being compelled to give testimony which the organization thought could compromise its operations. The ICRC argued that it was “an international body, which has its own separate mandate from the international community to work for the better implementation of international humanitarian law.”²⁰² Specifically, its international legal personality was confirmed by the fact that it had an international mandate entrusted to it under the Geneva Conventions and that it enjoyed autonomy in its operations, immunities, and some privileges.²⁰³ It submitted legal opinions from prominent scholars and advocates of international law who concluded that the ICRC had “functional international personality.”²⁰⁴ Ultimately, however, the Tribunal simply concluded that both the ICRC and the prosecutor agreed that the ICRC had international legal personality.²⁰⁵ This was supported by the existence of its mandate²⁰⁶ and widespread recognition of its “special status.”²⁰⁷ But it is important to note that the Tribunal did not find that the ICRC was an international organization. Instead, it was an international legal person of other origin.

²⁰¹ See *Simić et al.*, Case No. IT-95-9-PT, ¶ 13.

²⁰² *Id.* at ¶ 15.

²⁰³ *Id.* at ¶ 12 (“The ICRC relies, *inter alia*, on the following arguments in support of its opposition: the ICRC’s international mandate [mandate entrusted to it under the Geneva Conventions, the Additional Protocols and its Statute], its operational principles and their application, its status of immunity, the privileged nature of its communications and the impact of such testimony on its operations, and the privilege or confidentiality doctrine in national law.”).

²⁰⁴ See *id.* at ¶ 22 (“In their Opinions attached to the ICRC’s Submission, Professors Crawford, Salmon and David addressed, *inter alia*, the following issues: the ICRC’s functional international personality . . .”).

²⁰⁵ See *id.* at ¶ 35 (“The Trial Chamber first notes that the Prosecution and the ICRC agree that the following issues are not disputed: . . . - the ICRC has an international legal personality, and its mandate was conferred upon it by the international community. However, the Prosecution and the ICRC disagree as to the consequences that flow from the ICRC’s status.”).

²⁰⁶ See *id.* at ¶ 46 (“It is widely acknowledged that the ICRC, an independent humanitarian organization, enjoys a special status in international law, based on the mandate conferred upon it by the international community . . .”).

²⁰⁷ See *id.* at ¶ 50 (“The specific status and role of the ICRC was also recognised by the General Assembly of the United Nations.”).

Looking specifically at the IOC, there are clues that this is the type of international legal personality that Switzerland is contemplating. For example, one can consider the application of Swiss law on privileges and immunities. Under this law, the Swiss Confederation may grant privileges and immunities to a wide variety of entities, including diplomatic missions and consular posts (and “*les missions spéciales*” “ or “special missions”), international conferences, intergovernmental organizations or institutions (including non-organization secretariats), independent commissions, and international courts and arbitral tribunals.²⁰⁸ The law also excludes international non-governmental organizations from coverage.²⁰⁹ This does not cover all NGOs, but those that are specially “international.” It defines these entities as those constituted in the form of an association or foundation under Swiss law²¹⁰ whose members are natural persons or legal entities under domestic law,²¹¹ with a public service role²¹² and particular interest for Switzerland,²¹³ that operates internationally,²¹⁴ and collaborate with intergovernmental organization or international institutions.²¹⁵ As an example, it notes that observer status would be such a collaboration.²¹⁶ Such entities do

²⁰⁸ See Recueil systématique du droit fédéral [RS], Systematic collection of federal law, Nov. 1, 2022, RS 192.12, art. 2 (Switz.).

²⁰⁹ See *id.*

²¹⁰ See *id.*

²¹¹ See *id.* at art. 25b (“elle a pour membres des personnes physiques de nationalités différentes ou des personnes morales établies selon le droit national de différents États” [“its members are natural persons of different nationalities or legal persons established according to the national law of different States”]).

²¹² See *id.* at art. 25d (“elle poursuit des buts de service public ou d’utilité publique . . .” [“it pursues public service or public utility goals . . .”]).

²¹³ See *id.* at art. 25f (“sa présence sur le territoire suisse présente un intérêt particulier pour la Suisse” [“its presence on Swiss territory is of particular interest for Switzerland”]).

²¹⁴ See *id.* at art. 25c (“elle exerce une activité effective dans plusieurs États” [“it exercises effective activity in several States”]).

²¹⁵ See *id.* at art. 25e (“elle collabore avec une organisation intergouvernementale ou une institution internationale . . .” [“it collaborates with an intergovernmental organization or an international institution . . .”]).

²¹⁶ See *id.* (“ . . . par exemple lorsqu’elle dispose d’un statut d’observateur auprès d’une telle organisation ou institution” [“ . . . for example when it has observer status with such an organization or institution”]).

not receive any privileges immunities or other facilities,²¹⁷ other than some tax exemptions.²¹⁸

At first, it might appear that the IOC falls under the category of NGO. In its “FAQs,” the Swiss Foreign Ministry specifies that “International sports federations are classified as NGOs and the above rules [certain facilities, such as the exemption from paying direct federal taxes, but not privileges and immunities] therefore also apply,”²¹⁹ however, it is interesting to note that the IOC is not technically an international sports federation.²²⁰ But there are other reasons why the IOC would not be classified as an international NGO under Swiss law.

In addition to the entities mentioned above, the same law on privileges and immunities provides for “*les organisations internationales quasi gouvernementales*” (“quasi-governmental international organizations”)²²¹ and “*les autres organismes internationaux*” (“other international bodies”).²²² In order for those latter two categories to have any meaning, they must necessarily cover entities that are not intergovernmental organizations or institutions, etc. Helpfully, the law defines these other entities.²²³ In the case of quasi-governmental international organizations, these are entities that have states (or other international organizations) as the majority of members,²²⁴ resemble

²¹⁷ See *id.* at art. 24 (“Les OING [organisations internationales non gouvernementales] ne peuvent pas bénéficier des privilèges, immunités ou facilités prévus par la présente loi.” [“INGOs [non-governmental international organizations] may not benefit from the privileges, immunities or facilities provided for herein law”]).

²¹⁸ See *id.* at art. 24(3) (“Les OING [organisations internationales non gouvernementales] peuvent bénéficier des mesures prévues par les autres lois fédérales, en particulier des exonérations fiscales” [“INGOs [international non-governmental organizations] can benefit from the measures provided for by other federal laws, in particular from the tax costs”]).

²¹⁹ See *Privileges & immunities: frequently asked questions (FAQ)*, EDA SWITZ., <https://www.eda.admin.ch/missions/mission-onu-geneve/en/home/manual-regime-privileges-and-immunities/faq-privileges-et-immunites.html> (last visited Apr. 14, 2024).

²²⁰ See, e.g., Olympic Charter, 2023, *supra* note 106 (distinguishing between the IOC, NOCs and IFs, which are international sports federations such as FIFA).

²²¹ RS 192.12 (2022) at art. 2(c).

²²² *Id.* at art. 2(m).

²²³ *Id.* at art. 25(a).

²²⁴ *Id.* at art. 8(a).

international organizations in terms of structures,²²⁵ and operate internationally.²²⁶ In the case of “other international bodies,” the law defines these entities as ones that collaborate closely with one or more states or intergovernmental organizations/institutions to carry out their tasks,²²⁷ plays a major role in international relations,²²⁸ enjoys wide international notoriety,²²⁹ and whose work would benefit from privileges, immunities and facilities.²³⁰ The ICRC qualifies as an “other international body.” Because the ICRC has received some of these benefits, it is covered by one of these provisions in the law. We know it is covered because Article 3(1)(*bis*) of the same law specifically mentions a particular deviation for the ICRC from the default rules, having to do with pensions.²³¹

The agreement between the IOC and Switzerland appears to have a far better fit with the “other” category. That agreement specifically references the many agreements the IOC has reached with other international organizations²³² and its role in “international relations”²³³ and “notoriety throughout the world,”²³⁴ which leads it to conclude that exercises elements of international legal personality.²³⁵ This language directly tracks that in the law on immunities where it defines “other international organizations” due to their collaboration

²²⁵ *Id.* at art. 8(b).

²²⁶ *Id.* at art. 8(c).

²²⁷ RS 192.12 (2022) at art. 14(a).

²²⁸ *Id.* at art. 14(b).

²²⁹ *Id.* at art. 14(c).

²³⁰ *Id.* at art. 14(d).

²³¹ *Id.* at art. 3(1) (*bis*).

²³² See Switz.-IOC Accord 2000, *supra* note 62 (“considérant que le rôle universel du Comité International Olympique dans un domaine important des relations internationales, la notoriété qui est la sienne de par le monde et les accords de coopération qu’il a conclus avec des organisations intergouvernementales font apparaître des éléments de la personnalité juridique internationale” [“Considering that the universal role of the International Olympic Committee in a main importance of international relations, the notoriety which is his by the world and the cooperation agreements it has concluded with intergovernmental organizations governmental documents reveal elements of international legal personality.”]).

²³³ See *id.*

²³⁴ See *id.*

²³⁵ See *id.*

with international organizations, role in international relations, international notoriety, and utility of immunities.

To confirm this analysis, it appears that Switzerland is also applying the “other international body” category to the IOC. The law not only discusses granting privileges and immunities, but also “facilities.” The possible facilities include labor market access for staff, the right to use a flag and an emblem, the right to issue passes that will be recognized as travel documents, and vehicle registration benefits. Note that the IOC flies its flag at its headquarters²³⁶ and issues a *laissez passer*.²³⁷ This is important because it suggests that the IOC falls under this law. The IOC does not clearly enjoy any privileges or immunities under the law, which could suggest that it is not covered, and thus is not regarded as an international legal person. Granting privileges and immunities are not necessary for every international legal person.²³⁸ However, if the IOC receives facilities that are provided under the law, then it suggests the opposite: that it is covered, and thus is an international legal person. However, if indeed it is correct that Switzerland is applying the “other” category to the IOC, then there is already a legal foundation for granting it privileges and immunities. Thus, the IOC is certainly capable of enjoying them.

IOC appears to accept that international law and international human rights law applies to it in a manner similar to other international legal persons. As a preliminary remark, international law generally applies to its interpretation of the Charter, so for example, the CAS has applied international law in determining Gibraltar’s international legal status.²³⁹

The IOC also accepts that international human rights law applies to its activities. Most importantly, the Olympic Charter

²³⁶ See *The Olympic Flag*, INT’L OLYMPIC COMM., <https://olympics.com/ioc/olympic-flag> (last visited Mar. 24, 2024).

²³⁷ See OLYMPIC WINTER GAMES, DOCUMENTS ACCREDITIFS [ACCREDITING DOCUMENTS] (Comité d’Organisation des Xes Jeux Olympiques d’hiver Grenoble eds., 1968).

²³⁸ See RS 192.12 (2022) at art. 4(1) (Though the law specifically contemplates that different international entities will receive differing privileges and immunities) (“L’étendue personnelle et matérielle des privilèges, des immunités et des facilités est fixée cas par cas en fonction” [“The personal and material extent of privileges, immunities and facilities is determined on a case-by-case basis depending on . . . ”]).

²³⁹ See *GFA v. FIFA*, CAS 2014/A/3776 at ¶ 304.

declares that “[t]he practice of sport is a human right”²⁴⁰ and, accordingly, the Charter prohibits discrimination.²⁴¹ The language of the Charter invokes the terminology of human rights and identifies specific rights, such as freedom from discrimination, borrowing language from international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR).²⁴² Elsewhere the IOC has been even more explicit about the connection between international human rights law and the Charter, such as in the Athletes’ Rights and Responsibilities Declaration. In this instrument, the IOC stated that its policies and actions are “inspired by the Universal Declaration of Human Rights and other internationally recognised human rights standards, principles and treaties.”²⁴³ It also declares that athletes have a right to practice their sport without discrimination, including on the basis of “national or social origin” “or other immutable status.”²⁴⁴ In its Code of Ethics, the

²⁴⁰ See Olympic Charter, 2023, *supra* note 106, at Fundamental Principles of Olympism ¶ 8 (“The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”).

²⁴¹ See Olympic Charter, 2021, *supra* note 106 at Fundamental Principles of Olympism ¶ 4; *id.* at ¶ 6 (“The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”); *id.* at Rule 2 (The mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement. The IOC’s role is: . . . to act against any form of discrimination affecting the Olympic Movement); *IOC Code of Ethics*, *supra* note 148, at art. 1.

²⁴² See PRINCE ZEID RA’AD AL HUSSEIN & RACHEL DAVIS, RECOMMENDATIONS FOR AN IOC HUMAN RIGHTS STRATEGY 3 (2020), https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/News/2020/12/Independent_Expert_Report_IOC_HumanRights.pdf.

²⁴³ See IOC: Athlete 365, Athletes’ Rights and Responsibilities Declaration (Oct. 9, 2018), file:///C:/Users/mxp1789/Downloads/Athletes-Rights-and-Responsibilities-Declaration-%20(1).pdf (“This Declaration outlines a common set of aspirational rights and responsibilities for athletes within the Olympic Movement and within the jurisdiction of its members. It is inspired by the Universal Declaration of Human Rights and other internationally recognised human rights standards, principles and treaties. Its objective is to guide the Olympic Movement’s actions.”).

²⁴⁴ See *id.* (“This Declaration aspires to promote the ability and opportunity of athletes to: 1. Practise sport and compete without being subject to discrimination on the basis

IOC requires “[r]espect for international conventions on protecting human rights insofar as they apply to the Olympic Games’ activities and which ensure in particular: - respect for human dignity.”²⁴⁵ Recently, in “Agenda 2020,” the IOC has once again affirmed that host states for the Olympic Games must “take all necessary measures . . . to ensure that their activities in relation to the organisation of the Games comply with any international agreements, laws and regulations applicable in the Host Country, with regard to planning, construction, protection of the environment, health and safety, labour and working conditions and cultural heritage.”²⁴⁶

In order to develop a human rights compliance strategy, the IOC commissioned an independent expert opinion in March 2020.²⁴⁷ The experts were quite clear in the brief that “human rights” means international human rights law.²⁴⁸ The experts referred to “UN standards” or, more specifically, “international human rights law,” such as the ICCPR.²⁴⁹ For example, the IOC independent experts noted that the prohibition of discrimination in sport “is grounded in the broader right to equal and non-discriminatory access to take part in cultural life set out in Article 15 of International Covenant on Economic, Social and Cultural Rights.”²⁵⁰ Also, according to the independent experts, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and “other UN Conventions” protect sport for “potentially vulnerable groups or those that may suffer from structural discrimination.”²⁵¹ In the report, the independent experts

of race, colour, religion, age, sex, sexual orientation, disability, language, political or other opinion, national or social origin, property, birth or other immutable status.”).

²⁴⁵ *IOC Code of Ethics*, *supra* note 148, art. 1 (“Respect for the universal fundamental ethical principles is the foundation of Olympism. These include: . . . 1.4 Respect for international conventions on protecting human rights insofar as they apply to the Olympic Games’ activities and which ensure in particular: . . .”); ZEID & DAVIS, *supra* note 242, at 3.

²⁴⁶ See INT’L OLYMPIC COMM., OLYMPIC AGENDA 2020+5: 15 RECOMMENDATIONS 30 (2014), https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Olympic-agenda/Olympic-Agenda-2020-5-15-recommendations.pdf#page=30&_ga=2.163522364.1840670684.1619005637-578193902.1619005637.

²⁴⁷ ZEID & DAVIS, *supra* note 242.

²⁴⁸ See *id.*

²⁴⁹ See *id.* at 26.

²⁵⁰ *Id.* at 16.

²⁵¹ *Id.* at 17.

noted that the IOC has accepted legal responsibility, *i.e.* liability, when it has “control over an activity or entity.”²⁵² The experts argued that autonomy in sport comes with the obligation to respect international human rights law.²⁵³ The protections in the Olympic Charter also entail responsibility of the IOC and Olympic Movement toward athletes that their human rights will be respected.²⁵⁴ According to the IOC, its scope of jurisdiction and responsibility covers certain activities during the Olympic Games, leaving responsibility to the Organizing Committee for the Olympic Games (OCOG) for others.²⁵⁵ The independent experts noted that responsibility in the broadest sense does not necessarily entail legal liability, though it can.²⁵⁶ However, the independent experts remained somewhat vague about whether the IOC is bound to apply human rights or should adopt them when they say that the IOC “should make clear that ... the IOC’s responsibility is grounded in respect for international human rights standards”²⁵⁷ and recommend that the Olympic Charter be amended to specify its responsibility under international human rights law.²⁵⁸ Nonetheless, at a minimum the IOC must take action to prevent or mitigate violations of human rights when others fail to do so, even when not strictly liable.²⁵⁹

²⁵² *Id.* at 12.

²⁵³ ZEID & DAVIS, *supra* note 242, at 22.

²⁵⁴ *See id.* at 20.

²⁵⁵ *Id.* at 12.

²⁵⁶ *See id.* at 21.

²⁵⁷ *See id.* at 26 (“The IOC may want to consider that: 1. The new Human Rights Strategy . . . should make clear that: . . . c. the IOC’s responsibility is grounded in respect for international human rights standards . . . 3. The IOC should elaborate its understanding of its responsibility through a policy commitment on human rights . . .”).

²⁵⁸ *See id.* (“2. In the first phase of the strategy, the IOC should adopt an amendment to the Olympic Charter to reflect this understanding in both the Fundamental Principles and in the specific role and mission of the IOC in Rule 2. . . . In the second phase, the IOC should develop language that sets out the human rights responsibilities of NOCs and include it in Rule 27. The IOC should work towards including similar expectations of IFs under Rule 26 in the third phase of the strategy.”).

²⁵⁹ *See* ZEID & DAVIS, *supra* note 242, at 21 (“3. The IOC’s responsibility for human rights is broader than, and different from, the IOC’s legal liability and its ‘jurisdiction’ The IOC, as the supreme authority of the Olympic Movement, has a unique responsibility to seek to ensure the safety, security and well-being of people when other entities with the primary (legal) responsibility for doing so — the NOCs, IFs, OCOGs or the national authorities concerned — have manifestly failed, meaning that they have been unable or unwilling to discharge their responsibilities in the manner

Not only has the IOC implicitly endorsed this view by posting the independent expert report on its website prominently, it also appears to have accepted responsibility where it has effective control or acts or individuals and the ability to act.²⁶⁰ Although the independent experts were somewhat vague whether the IOC's obligation to comply with human rights was a strictly legal duty,²⁶¹ they were in agreement that the IOC must act in the spirit of human rights and take actions to prevent human rights violations regardless of whether they were legally bound to or not.²⁶² The responsibility of the IOC is not only for protecting human rights at the Olympic Games, but protecting rights structurally in international sport.²⁶³ As such, the IOC must explore all the means at its disposal to protect human rights²⁶⁴ and cannot be merely verbal or moral, but must actually provide remedies.²⁶⁵ And it is clear that the IOC is ultimately the organ of the Olympic Movement charged with responsibility for ensuring human rights. Thus, it would seem that the IOC has accepted that international law and international human rights apply to its activities.

Following from the analysis above, the IOC is likely bound to follow human rights law, or at least to follow the spirit of it. As an international legal person, or at least a *de facto* international legal person, the IOC must comply with international law. The IOC is obviously not party to any international human rights conventions, but it is bound by customary international law. However, admittedly, there is still a good faith argument that the IOC is not conclusively an international legal person and thus not formally bound to human rights law. That being said, the IOC has certainly dedicated itself and pledged to complying with international human rights law. So, while it might not be formally bound, it has consented to act in accordance with human rights law.

expected of them. This is not the same as the IOC being *liable* for such failures. Instead, the IOC is expected to take appropriate action based on the existence of a connection to the harm and the nature of that connection i.e. whether it has caused or contributed or is linked to the harm”).

²⁶⁰ See *id.* at 12.

²⁶¹ See *id.* at 26.

²⁶² See *Id.* at 21.

²⁶³ See *id.*

²⁶⁴ See *id.*

²⁶⁵ See ZEID & DAVIS, *supra* note 242, at 22.

Based on the extensive evidence mentioned already, the international community appears to treat the IOC as if it was an international legal person, though not necessarily an international organization. Keeping in mind the views of the *Reineccius* arbitral tribunal, the IOC was founded even before the BIS, closer in time to the ICRC, when international law at a different “stage of development.”²⁶⁶ When it was founded, states were still entering into treaties with international trade corporations.²⁶⁷ It was entirely reasonable for Coubertin to consider at the time that the IOC would be akin to, but not identical to, the League of Nations. We can recall that the international community has granted the ICRC an important role in monitoring state compliance with international humanitarian law under the Geneva Conventions. Although the activities of the IOC are perhaps not as critical as those of the ICRC, the international community has also granted the IOC an international role, sometimes by treaty. Given that the IOC explicitly asserted its international legal personality in the Olympic Charter of 1975 and Switzerland recognized its “elements of international personality” in 2000, in addition to all of the other evidence above, it is reasonable to conclude that the IOC has international legal personality.

V. CONCLUSION

The situation of the IOC appears to be that a group of persons informally incorporated an entity that they intended to be – what contemporary international law could call – an international legal person. They were successful, perhaps because of the “stage of development of international law” in 1894. Over time, international law moved away from recognizing international legal persons of other status, and the IOC partly resisted this movement by asserting its unique status (such as in the 1975 Olympic Charter) and partly accepted this evolution in the law by pragmatically agreeing to formal designation as an association (such as in subsequent Charters). However, in the more recent decades, international law has been relaxing its exclusionary approach and recognizing more entities as international legal persons than it might have previously, such as the

²⁶⁶ See *Reineccius et al.*, 43 ILM 893 at ¶ 105.

²⁶⁷ See *British South Africa Co.-Portugal Agreement*, 1914, *supra* note 185.

ICRC. The IOC is slowly moving into this space, e.g. by taking its seat as a UNGA observer, and gradually attempting to reclaim the status that its founders intended.

Following this interpretation, the IOC is currently a transitional international legal person with certain aspects of internationalization and certain aspects of domestication. In this regard it is more akin to the BIS or ICRC than to the League of Nations. It is not correct to say that the IOC is simply a Swiss association, just as it is not correct to call it an international organization. Its apparent destination is status as a full international legal person of other origin, though it has not had that status fully accepted, which results in rather limited personality.

For now, this quasi-status means that the IOC will, for some purposes, be treated as if it was an international legal person, and, for other purposes, be treated as if it was not. Most of these functions are clearly designated, for example, as proved in the Swiss-IOC agreement. As a Swiss association, it should, in principle comply with Swiss law on many matters. In this sense, we can recall the degree to which the BIS is governed by Swiss law in governance procedures, etc.²⁶⁸ Yet, the IOC is also exempt from certain rules. Certainly, in the area of asserting "jurisdiction" over the Olympic Games and sporting governance, the IOC is autonomous and Swiss law does not control. It is "an extra juridical order," to borrow Silance's phrase.²⁶⁹ Other functions may be unclear, and this Article will not attempt a precise classification of all rules. For those unclear functions, the international community must ask whether the function is more in keeping with the IOC's international role or domestic formal status. Depending on the further development of international law and evolving treatment of the IOC, it is possible that the IOC could realize Coubertin's initial vision of fully recognized status as an international legal person before its 150th birthday.

²⁶⁸ See *Reineccius et al.*, 43 ILM 893 at ¶ 106.

²⁶⁹ See Silance, *supra* note 146, at 622.