

From Non-discrimination to the Guiding Principles and Back: How the Olympics Have Addressed Human Rights until Today

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In¹ step with society, scholars have devoted a lot of attention to the issue of human rights (HR) and sport since the beginning of the 21st century (e.g., Kidd and Donnelly 2000; Taylor 2000; Donnelly 2009; Palmer 2013; Adams and Piekartz 2015; Horne 2018; McGillivray et al. 2018; Duval and Heerdt 2020; Latty 2020; Ross 2021). Whereas HR in football has come under intense scrutiny before the 2022 football World Cup in Qatar, few analyses have focused entirely on the Olympic Games, even though the century-long history of the world's largest multi-sports event illustrates the gradual convergence of the Olympic and HR's ideals and their reciprocal influences (the main exception is Talbot 2022). The present paper helps fill this gap in the literature by examining the Olympic Games' relationship with HR, which have long haunted the Olympic ideal. Indeed, the goal of the Olympic Games, as defined by the Olympic Charter – the “basic instrument of a constitutional nature” for the Olympic system – is to “place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of *human dignity*.”² As this paper shows, the Olympic Games' relationship with HR parallels the evolution of international HR law and of society's conception of HR and the ways they are respected and promoted.

Drawing on previous research by historians and other scholars, and on documents produced by the International Olympic Committee (IOC), intergovernmental organisations (UN, ILO, UNESCO, OECD, Council of Europe, etc.) and specialists in international law, four key periods are identified in the Olympic Games' evolving relationship with HR. Despite the difficulty of establishing a comprehensive definition of what HR entail, the need to respect HR has gained

1 This paper is an updated version of an article which appeared in *Sport in Society, Cultures, Commerce, Media, Politics*, in 2021.

2 IOC. *Olympic Charter, in force as from 17 July 2020* (Lausanne: International Olympic Committee, 2020), page 11, my italics.

ever-greater prominence with each passing Olympiad, in line with the ideals of peace and fair play proclaimed since the renaissance of the Olympic Games. Section one describes the Games' first explicit encounter with HR, in the run up to and during the 1936 Berlin Olympics, before these rights were recognised as universal in the aftermath of World War II. The most important HR issue for the Olympic Games in the decades following the war was race relations, especially the fight against apartheid in southern Africa and the civil rights struggle in America in the 1960s and 1970s (Section 2). The IOC's decisions to attribute the 2008 Summer Olympics and 2022 Winter Olympics to Beijing at the turn of the 21st century resulted in China becoming the focus of demands for the IOC to move the Games out of China or otherwise face the threat of boycotts (Section 3). Sections four and five look at the latest developments in the Olympics' relationship with HR, most notably the IOC's espousal of the idea that businesses (such as most stakeholders of the Olympic system) have responsibilities toward HR and athletes' growing demands for their individual rights to be respected. The conclusion discusses the need for Olympic Games and the whole Olympic system to continue paying more attention to HR, in tune with today's evolving political and social context.

1 The 1936 Berlin Olympics and Antisemitism

The concept of HR first emerged in 17th and 18th century Europe and gradually led to the drafting of the Declaration of the Rights of Man and of the Citizen, a landmark document adopted in 1789, at the start of the French Revolution. Although this declaration was a major step forward, it is highly flawed from a modern point of view.³ The IOC and the Olympic system were founded more than a century later (in 1894) with the ideal of using international sports competitions to build understanding between peoples and thereby promote peace.

Early editions of the modern Olympic Games were modest affairs and had no geopolitical dimension.⁴ This changed with the 1936 Berlin Olympics, which the IOC had attributed to Germany's capital in 1931, before the Nazi party came to power in 1933. Although the Nazis had initially opposed hosting the Olympics, they came to see the event as an excellent opportunity to promote the "new Germany." However, concern over the Nazis' anti-Semitic

3 Paul Gordon Lauren. *The Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2003).

4 Barbara Keys. *Globalizing Sports, National Rivalry and International Community in the 1930s* (Cambridge, MA: Harvard University Press, 2006), page 71.

policies quickly led some Americans to call for a United States boycott of the Games and to a long debate at the IOC's 1933 annual meeting on the divergences between the Nazi doctrine and the Olympic spirit, notably with respect to the German team's failure to include Jewish athletes.⁵

Scepticism over the Nazis' promises that Jewish athletes would be selected on merit led the American Olympic Association (AOC), the body responsible for organising the American team, to send its president, Avery Brundage, to Germany on a fact-finding mission in the summer of 1934. On his return, Brundage convinced the AOC that the Nazis would keep their word and that America should send a team to Berlin. Despite an increasingly vociferous campaign for a boycott in New York City, Brundage vigorously defended his position throughout 1935 on the grounds that sport should remain aloof from politics. In October 1935 the AOC narrowly voted to support their president's position⁶ and at the end of the year the IOC co-opted Brundage to replace his fellow American, Ernest L. Jahncke, who had been expelled from the IOC for supporting the boycott in an article in the *New York Times*. There were also calls for a boycott in several European countries, most notably from France's communist newspaper *L'Humanité*, but they were not heeded. Some opponents of the Berlin Olympics heralded the People's Olympiad as a possible alternative, but the event, due to be held in Barcelona a month before the Games in Berlin, was cancelled when the Spanish Civil War broke out in July 1936.⁷

The United States did send a team to the 1936 Berlin Olympics, where the triumphs of several African American athletes (including Jesse Owen, who won four gold medals) rebutted the Nazi theory of Aryan supremacy (even though the United States was itself racially segregated). Not one country boycotted the Games, despite the Nazis' anti-Semitic laws and policies. Admittedly, the anti-Jewish slogans disappeared from Berlin during the Games (as in Garmisch-Partenkirchen, which had hosted the Winter Olympics six months earlier) and the German team included a "half-Jewish" athlete – the fencer Helene Mayer, who was studying in the United States – but several Jewish athletes who should have been selected were not chosen.

5 Allen Guttman. *The Games must go on* (New York City: Columbia University Press, 1984), page 65.

6 *Ibid*, page 72–74.

7 James Stout. *The popular front and the Barcelona 1936 popular Olympiad* (Singapore: Palgrave, 2020).

2 The Olympic Games of the 1960s and 1970s and the Fight against Racism

World War II brought an end to the Nazis' atrocities and paved the way for a new international system overseen by the United Nations (UN), which was founded in 1945. Just three years later, the UN's General Assembly, meeting in Paris, adopted the Universal Declaration of Human Rights (UDHR), whose 38 articles set out the "basic rights and fundamental freedoms" inherent to all human beings, notably dignity, liberty and equality before the law independent of a person's status, origin, nationality, gender, religion, ethnicity, or language. Articles 18 to 21 established the rights to freedom of opinion, expression and religion and the right of peaceful association (especially important for sport organisations, which are mostly non-profit associations). Adams and Piekarz later categorised these rights into five themes, which they named freedom (of movement, association, etc.), protection (from the state in relation to torture, detention, etc.), access (to an impartial legal system with presumption of innocence), equality (of treatment for all, non-discrimination), and ability (to maintain wellbeing).⁸

Although sport was never mentioned during the months spent preparing the UDHR⁹ and is referred to only indirectly via the right to rest and leisure (article 24), HR concern all people, including all athletes. Specific games for workers and for women were created during the early decades of the 20th century and briefly competed with the Olympics but disappeared when these categories of people were fully accepted into the Olympic Games. The first Paralympic Games (for athletes with disabilities) took place in 1960, while young athletes can compete at the International Children's Games (for athletes aged 12 to 15 years) and, from 2010, Youth Olympic Games (for athletes aged 14 to 18 years).

The UDHR is a landmark in human history, even though it constitutes only soft law. In fact, it is not an international treaty that countries can sign and then ratify (or access) and incorporate into their national legislation. Nevertheless, during the decades following the adoption of the UDHR, many of the rights it describes were enshrined in global or continental treaties, conventions and covenants, through which states have committed themselves to respecting

8 Andrew Adams and Mark Piekarz. "Sport events and human rights: positive promotion or negative erosion?", *Journal of Policy Research in Tourism Leisure and Events* 7(3) 2015, pages 1–17.

9 Barbara Keys (ed.). *The Ideals of Global Sport, From Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), page 9.

some or all of these rights. The website of the Office of the United Nations High Commissioner for Human Rights (OHCHR) – an intergovernmental organisation founded in 1993 – lists UN member states that have signed and/or ratified one or more of 18 international HR treaties that cover sectors the OHCHR considers fundamental, notably racial discrimination; civil and political rights; economic, social and cultural rights; discrimination against women; torture and other inhuman or degrading treatments; and forced disappearances.¹⁰

HR now cover many more domains than those considered before World War II, when antisemitism was the predominant HR issue in a still largely colonial world. Moreover, the treaties referred to in the previous paragraph sit alongside other treaties and conventions concerning workers' rights that were drawn up during the same period by the International Labour Organization (ILO, created in 1919, prior to the UN's existence, but now part of the UN system). The rights set out in these ILO treaties are included in the Declaration on Fundamental Principles and Rights at Work, which was adopted in 1998 as a counterpart to the UDHR.¹¹ An ILO website lists the countries that have signed and ratified eight fundamental conventions covering issues such as forced labour, freedom of association, discrimination at work and child labour, some of which were adopted as early as 1930.¹²

Ratifying these UN and ILO treaties and conventions commits states to incorporating the HR involved into their national legislation, thereby creating an international (public) HR law. However, certain countries' reluctance to ratify some of these treaties negatively impacts the universality of the HR they describe. For example, considering just recent and upcoming Olympic Games host countries, by the end of 2022 neither the United States nor China had ratified the 2006 Convention for the Protection of all Persons from Enforced Disappearance; neither Brazil, France nor the United States had signed or ratified the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Japan had not ratified the 1957 Abolition of Forced Labour Convention; and Australia had not ratified the 1972 Minimum Age Convention (for children's work). Conversely, Switzerland – the seat of

10 OHCHR. *Status of ratification interactive dashboard*, <https://indicators.oHCHR.org> (last consulted on 6th April 2023).

11 ILO. *Declaration on Fundamental Principles and Rights at Work*, International Labour Organization, 1998, www.ilo.org/declaration/lang-en/index.htm (last consulted on 6th April 2023).

12 ILO. *Ratifications of fundamental Conventions by country*, International Labour Organization Normlex, www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F (last consulted on 6th April 2023).

numerous global sport organisations¹³ – has ratified most of the fundamental conventions listed by the OHCHR and ILO. These differences between countries make HR a highly political issue.

In parallel with the constitution of a corpus of international HR law through the instruments mentioned above, the post-war world was also undergoing decolonisation. The newly independent countries that emerged from the break-up of Europe's pre-war colonial empires in Africa, Asia and the Caribbean set up their own National Olympic Committees (NOC) so they could take part in the Olympic Games. As a result, the number of NOCs participating in the Games increased from 67 at Melbourne 1956 to 112 at Mexico City 1968. Conversely, South Africa, which had taken part (as a British dominion) in every edition of the Olympic Games since Saint-Louis 1904, was excluded from the Olympics after Rome 1960 due to the country's policy of apartheid. Under pressure from the newly independent African countries, the IOC withdrew its recognition of South Africa's NOC in August 1964 on the grounds that its segregationist system breached the first fundamental principle of the Olympic rules (now called the Olympic Charter) which in 1949 added the sentence: "No discrimination is allowed against any country or person on grounds of colour, religion or politics."¹⁴ As a result, South Africa was prevented from sending a team to the Tokyo Olympic Games in October 1964.

Initially, the IOC's ban on South Africa covered only the 1964 Summer Olympics. An IOC commission of enquiry dispatched to South Africa decided that the country's promise to send a multiracial team to future Olympic Games was enough to allow it to take part in the 1968 Mexico City Games. However, South Africa's invitation to the 1968 Olympics was withdrawn in the face of a threatened boycott by African countries, organised by the Supreme Council for Sport in Africa. They were joined by the Soviet Union and around 60 American athletes belonging to the Olympic Project for Human Rights (OPHR), who wanted to combat racism in sport and promote civil rights in America. Finally, the IOC definitively withdrew its recognition of South Africa's NOC in 1970¹⁵ and the country did not participate in the Olympics again until 1992,

13 Jean-Loup Chappelet. "Switzerland's century-long rise as a hub of global sport Administration", *The International Journal of the History of Sport* 38(6) 2021, pages 569–590.

14 IOC. *Olympic Rules, Citius, Altius, Fortius* (Lausanne: International Olympic Committee, 1949), page 5.

15 Robert Skinner. "Antidiscrimination, Racism and the Case of South Africa" in Barbara Keys (ed.) (2019) *The Ideals of Global Sport, From Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), pages 47–67.

after the apartheid system had been dismantled. In 1965, the UN adopted an International Convention on the elimination of all forms of racial discrimination and in 1973 a Convention on the Suppression and Punishment of the Crime of Apartheid, which imposed economic sanctions on countries that practised institutionalised racism or encouraged racial discrimination in any domain. It was followed in 1978 by an International Declaration against Apartheid in Sports.

Although the OPHR carried out numerous actions, it is best known for Tommie Smith's and John Carlos' black-gloved fist salute during the men's 200 metres medal ceremony at the 1968 Mexico Olympics (Australia's Peter Norman, who won the silver medal, also wore an OPHR badge on his tracksuit). The United States Olympic Committee and the IOC immediately excluded Smith (gold medallist) and Carlos (bronze) from the American team and from the Games, and Australia's NOC ostracised Norman for the rest of his career. These organisations and the media have since rehabilitated the three men and their demonstration has become an iconic example of the type of freedom of expression banned in Olympic sites by Rule 50.2 of the Olympic Charter. Nevertheless, it was the less well-known threat of a boycott by African countries before the Mexico Games that led the IOC to take an important step in fighting racism at the Olympics by excluding apartheid-era South Africa.

Protests against racism continued at the next two Olympic Games. Once again, the IOC bowed to a threatened boycott and excluded the apartheid state of Rhodesia (today Zimbabwe) from Munich 1972, but it was unable to prevent all the African countries withdrawing from Montreal 1976 (even though most of them had taken part in the opening ceremony) over the New Zealand All Blacks rugby team's tour of South Africa (even though rugby was not yet an Olympic sport).

According to Skinner, antiracism in sport and the Olympics "was not a function of inherent moral ideals but rather the gradual adoption of norms that emerged in political and social discourse in the process of decolonization."¹⁶ MacAloon suggested that the Olympic Games' growing success in the second half of the 20th century was due to the event providing a four-yearly symbol of the shared humanity of athletes and spectators/television viewers that went beyond each person and their nationality, an idea that was consubstantial with that of universally shared human nature and rights.¹⁷

16 Ibid, page 64.

17 John J. MacAloon. *This Great Symbol, Pierre de Coubertin and the Origins of the Modern Olympic Games* (Chicago: University of Chicago Press, 1982).

The issue of racism fell off the Olympic agenda until the eve of the Tokyo 2020+1 Olympics, when the IOC had to relax Rule 50.2 of the Olympic Charter and give Olympians greater freedom to express their views (other than on the podium, in the Olympic village and during ceremonies), as long as these expressions were “non-targeted, directly or indirectly, against people, countries, organizations.”¹⁸ This change was made in response to criticism by athletes of previous Rule 50.2’s strict ban on any sort of “demonstration or political, religious or racial or propaganda in any Olympic sites, venues or other areas,” and in the light of the Black Lives Matter movement, which began in 2013 in the United States and led many athletes to take the knee during the American national anthem. Following the change to Rule 50.2, several football teams at the 2020+1 Tokyo Olympics took the knee before their matches and a hockey player wore rainbow-coloured socks in support of the LGBTQ+ movement. In addition, a Costa Rican gymnast ended her floor routine with a raised fist, an American athlete crossed her arms above her head after receiving her silver medal on the podium and Chinese athletes wore Mao Zedong badges on their tracksuits during their medal ceremonies. Although these latter three demonstrations were, in principle, banned, they did not give rise to sanctions from the IOC.

Despite the Olympic protests of the 1960s and 1970s, the idea that sport and the Olympic Games could be used to promote HR did not truly emerge until the late 20th century. Indeed, Olympic sport had originally been the preserve of gentlemen amateurs and therefore highly discriminatory. These gentlemanly origins, together with the enduring notion that politics should be kept out of sport, may explain why observers barely mentioned Olympic host countries’ HR violations during the 1980s, even though the Soviet Union (Moscow 1980) was known to persecute dissidents and Jews and the Korean government (Seoul 1988) had used lethal force against opponents (as Mexican security forces had done prior to Mexico City 1968). Helsinki Watch (the forerunner of Human Rights Watch – HRW)¹⁹ even went as far as to oppose the United

18 Graham Dunbar. “IOC gives athletes more scope for protest at Tokyo Olympics”, *Associated Press*, 2nd July 2021, <https://apnews.com/article/tokyo-olympic-games-2020-tokyo-olympics-race-and-ethnicity-sports-3f8d420b7e94bbafa037d22327efb38b> (consulted on 6th April 2023). Johan Lindholm’s article implies that the relaxing of Rule 50.2 was necessary in order for the new rule not to be challenged at the Swiss Federal Tribunal for being incompatible with public policy: Johan Lindholm. “From Carlos Kaepernick and beyond: athletes’ right to freedom of expression”, *The International Sports Law Journal* 17(2017):1–3.

19 Helsinki Watch was founded after the signature of the 1975 Helsinki Accords between the eastern and western blocs, which included a “basket” on human rights.

States' boycott of the 1980 Moscow Olympics (over the Soviet Union's invasion of Afghanistan) on the grounds that it violated the right of athletes to compete in the Games.²⁰ Nevertheless, by 1991 the IOC had become sufficiently aware of the importance of HR to reformulate the basic principles of the Olympic Charter to include references to "universal fundamental ethical principles" and "human dignity":

- 2 [...] Olympism seeks to create a way of life based on the joy found in effort, the educational value of good example and respect for *universal fundamental ethical principles*.
- 3 The goal of Olympism is to place everywhere sport at the service of the harmonious development of man [sic], with a view to encouraging the establishment of a peaceful society concerned with the preservation of *human dignity*.²¹

These vague principles are still in force (subsequently renumbered) and constitute a soft law for the Olympic system, especially the IOC and Olympic Games organising committees. In 2003 the IOC even created a new but somewhat "precatory and non-binding" HR²² when it added a further fundamental principle proclaiming: "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."²³ In this, the IOC followed article 1 of UNESCO's International Charter of Physical Education and Sport, adopted by member states in 1979 and other instruments.

The creation of the Court of Arbitration for Sport (CAS) by the IOC in 1983 and the subsequent introduction of the Code of Sports-related Arbitration can also be seen as steps in promoting the right of athletes to be heard beyond their federation and in a way that Switzerland's Federal Tribunal²⁴ and the European Court of Human

20 Barbara Keys (ed.). *The Ideals of Global Sport, From Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), page 9.

21 IOC. *Olympic Charter* (Lausanne: International Olympic Committee, 1991), page 7, my italics.

22 Stephen F. Ross. *Global Sports Law* (Cheltenham, UK: Edward Elgar, 2021), Chapter 6: Sports and human rights, page 117.

23 IOC. *Olympic Charter, in force as from 4 July 2003* (Lausanne: International Olympic Committee, nd [2003]).

24 Jean-Loup Chappelet. "The governance of the Court of Arbitration for Sport", in Dikaia Chatziefstathiou, Borja García and Benoît Seguin (Eds.) *The handbook of Olympic and Paralympic Studies* (London: Routledge, 2020), pages 309–320.

Rights²⁵ recognise as independent.

3 China's Olympic Games and the Rights of Indigenous Groups

The Olympic Games held during the initial decades of the 21st century, especially the 2008 Beijing Summer Olympics and 2022 Beijing Winter Olympics, raised HR issues that had rarely, if ever, been raised with respect to the Olympics. One such issue is the right to adequate housing (UDHR article 25 and other instruments of international law), which has been brought to the fore by incidences of people being forcibly evicted from their homes to make way for Olympic facilities. A detailed report published by the Geneva-based Centre on Housing Rights and Evictions (COHRE) showed that such practices have occurred at least since the 1988 Seoul Olympics, but it was the clearance of an area of low-income housing to make way for Atlanta 1996's Olympic stadium and Olympic village that first brought the issue to the public's attention.²⁶ More recently, and despite the guidelines contained within the COHRE's report, Rio 2016's Barra de Tijuca Olympic Park was built on the site of the Vila Autodromo favela after its inhabitants had been evicted and rehoused in places far from where they worked.²⁷ In the case of Beijing 2008, the historic housing district of Hujialou, to the north of city, was demolished to build the Olympic Park.²⁸

Nevertheless, the biggest HR issue raised by attributing the Olympic Games to Beijing was not housing rights but China's disregard for several other rights, including the rights of minorities, the right to self-determination, the right to seek, receive and impart information and the right to demonstrate.

The Chinese government first tried to obtain the Olympic Games in the 1990s, with the aim of marking China's arrival as a major power by bringing the 2000 Games to Beijing. HRW, with discreet support from Amnesty

25 Antoine Duval. "The 'victory' of the Court of Arbitration for Sport at the European Court of Human Rights: The End of the Beginning for the CAS", *Asser International Sports Law Blog*, 10 October 2018, www.asser.nl/SportsLaw/Blog/post/the-victory-of-the-court-of-arbitration-for-sport-at-the-european-court-of-human-rights-the-end-of-the-beginning-for-the-cas (last consulted on 6th April 2023).

26 COHRE. *Fair play for housing rights, Mega-events, Olympic games and housing rights, Opportunities for the Olympic movement and others* (Geneva: Centre on Housing Rights and Eviction, 2007).

27 Sukari Ivester. "Removal, resistance and the right to the Olympic city: The case of Vila Autodromo in Rio de Janeiro". *Journal of Urban Affairs* 39(7) 2017, pages1–16.

28 Jim Yardley. "Olympics Imperil Historic Beijing Neighborhood", *The New York Times*, 12th July 2006.

International (the main NGO involved in defending HR with HRW), launched a campaign to oppose China's bid, which came just a few years after the 1989 Tiananmen Square massacre destroyed hopes of the country becoming more democratic. Indeed, Beijing's 2000 bid denied any possibility of opposition, even by a minority of Chinese people, stating: "Neither now or in the future will there emerge in Beijing organizations opposing Beijing's bid and the hosting of the 2000 Olympiad."²⁹ Following a hard-fought campaign, the IOC finally attributed the 2000 Olympics to Sydney by a slender majority of two votes. Although the HR situation in China was just one of many factors that influenced the IOC's decision,³⁰ this was the first time an Olympic Games had been impacted by HR issues that did not relate directly to athletes, sport or the Games themselves, but to the way a regime treated its citizens. As Keys noted: "HRW opened the door to a nearly limitless range of moral claims on the Olympics."³¹ In addition, at the end of the 20th century, HRW and other NGOs began using the Olympic Games to attract attention to HR issues, a policy they have continued to pursue in order to harness the massive media coverage the Olympics receive every four years.

Although the concept of "human rights" (*renquan*) had been alien to Chinese thought, in 2004 the Chinese government added the term to the country's constitution.³² Brownell suggested that, rather than the individual civil and political rights the western world usually categorises as HR, China's intention was to highlight other types of rights, notably a population's right to economic subsistence. The fact that China ratified the International Covenant on Economic, Social and Cultural Rights in 2001 but did not ratify the International Covenant on Civil and Political Rights, whereas the United States ratified the latter convention in 1992 but has not yet ratified the former, illustrates the two countries' differing conceptions of the importance of different HR.

Beijing's second bid for the Olympics, this time aiming for the 2008 Summer Games, was successful, as the city easily beat Toronto, Paris, and Osaka, despite

29 Quoted by Bruce Kidd and Peter Donnelly. "Human Rights in Sports", *International Review for the sociology of sport* 35(2) 2000, pages 131–148 (footnote 5, page 146).

30 Steve Larkin. "How Sydney won the 2000 Olympic bid". *The Canberra Times*, 7 September 2020. www.canberratimes.com.au/story/6912752/how-sydney-won-the-2000-olympic-bid (last consulted on 6th April 2023).

31 Barbara Keys (ed.). *The Ideals of Global Sport, From Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), page 117.

32 Susan Brownell. "The view from China, Two Olympic Bids, One Olympic Games and China's Changing Rights Consciousness", in Barbara Keys (Ed.). *The Ideals of Global Sport, from Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), page 183–84.

demonstrations over violations of Tibetans' rights just before the IOC's vote. The IOC's official position at the time was that the Games would improve HR in China – notably those of Tibetans – if international pressure on the organisers continued. HRW's response to Beijing's new bid was muted³³ and there were few protests over the event until the run up to the Games, when controversy erupted over China's actions in Tibet, its involvement in the war in Darfur (South Sudan) and its persecution of Falun Gong, a Chinese religious organisation. Riots took place in Tibet in March 2008. Protests over HR abuses in China came to a head during the Olympic torch relay, which the Chinese organisers had planned as a worldwide event in the spring of 2008, like the Athens relay four years earlier. Demonstrations by Tibetan exiles and other critics of China's HR failings severely disrupted the relay's passage through London, Paris, San Francisco, New Delhi, Canberra, Nagano and Seoul (order along the route), while Reporters Without Borders highlighted the absence of press freedom in China and Amnesty International juxtaposed the Olympic Games with HR violations, including China's use of the death penalty (via the slogan: "Stop the world record of executions"). HRW concentrated on violations directly linked to staging the Games, such as the forced evictions of residents to clear sites for Olympic stadiums (see above). Many voices called for boycotts and strongly criticised the IOC, which found itself under huge international pressure.³⁴ According to one senior IOC member, the 2008 Olympics were "saved" by the wave of compassion for Chinese people that followed the massive earthquake that hit Sichuan province in May 2008.³⁵ The IOC's position throughout this period was that the Games should not be hijacked for political and non-sporting motives.

In the end, the Beijing Olympics took place without a hitch in August 2008. All the NOCs attended, as did numerous heads of state/government, including the president of the United States – the first time a US president had attended a Games not held on American soil. The only concession the IOC obtained from the Chinese authorities was to unblock internet access for foreign journalists working in the Beijing Olympic press centre. During the closing ceremony, the IOC's president, Jacques Rogge, declared that: "The world has learned about China, and China has learned about the world, and I believe this is something

33 Barbara Keys (ed.). *The Ideals of Global Sport, From Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), pages 123–24.

34 Bruce Kidd. "Human rights and the Olympic movement after Beijing", *Sport in Society* 13(5) 2010, pages 901–10.

35 John J. MacAloon. "Agenda 2020 and the Olympic Movement", *Sport in Society* 19(6) 2016, page 575.

that will have positive effects for the long term.” In contrast, Brownell suggested that although the Games had broken the taboo on discussing HR in China, they had not fundamentally changed the situation.³⁶ Nevertheless, HR NGOs were mostly silent when the Chinese city of Nanjing hosted the 2014 Summer Youth Olympic Games, probably because they felt that this event did not receive enough media coverage.

The following year the IOC attributed the 2022 Winter Olympics to Beijing, ahead of Almaty (Kazakhstan), the only other candidate city. MacAloon described this choice as “the devil’s alternative,” because the HR situation was poor in both candidate countries.³⁷ HR groups began protesting these Games in 2019, accusing China of grossly violating the rights of the (mostly Muslim) Uyghur people (in Xinjiang or East Turkmenistan), the people of Hong Kong and the native people of South Mongolia (aka Inner Mongolia in China), as well as those of Tibetans (still). Claims that China was trying to wipe out local cultures have led to Beijing 2022 being called the “Genocide Games”³⁸ and to numerous calls to boycott the event. China saw this criticism as a resurgence of the Cold War. A “political boycott” (absence of numerous NOCs, as at Moscow 1980) did not happen. Instead, a “diplomatic boycott” was proclaimed by several countries: many heads of state/government did not visit the Games, notably the opening ceremony. Very few competing athletes protested and some Olympic sponsors did not advertise their association with the Games in some markets concerned by HR in China.

The host city contract (HCC) for Beijing signed in 2015 at the time the 2022 Winter Olympics were attributed did not mention HR (unlike the contract for Paris 2024 and its successors; see the following section), which are alluded to only once, in article 18b, via the sentence: “In conformity with the fundamental principles of Olympism (as defined in the Olympic Charter), the OCOG shall carry out various activities during the period leading up to and throughout the Games in connection with the promotion of peace and *human understanding* through sport, and in particular of the Olympic Truce.”³⁹ Although the Olympic

36 Susan Brownell. “The view from China, Two Olympic Bids, One Olympic Games and China’s Changing Rights Consciousness”, in Barbara Keys (Ed.). *The Ideals of Global Sport, from Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), page 183–84.

37 John J. MacAloon. “Agenda 2020 and the Olympic Movement”, *Sport in Society* 19(6) 2016, page 575.

38 CPHRC. *The Darkness Deepens: The Crackdown on Human Rights in China 2016–2020* (London: [UK] Conservative Party Human Rights Commission, 2021).

39 IOC. *Host City Contract, XXIV Olympic Winter Games in 2022* (Lausanne: International Olympic Committee, nd [2015]). https://stillmed.olympic.org/Documents/Host_city_elections/Host-City-Contract-XXIV-Olympic-Winter-Games-in-2022--Beijing-Execution-no-signature.pdf (last consulted on 6th April 2023), my italics.

Charter's fundamental principles refer to "human dignity" and "universal fundamental ethical principles" (see Section 2), this HCC sentence is very vague. Moreover, the only sanction the HCC allows – withdrawing the Games from the host city – is difficult to apply, especially as the Games approach, because of the difficulty of finding a replacement host city or cancelling the event.

It is also very difficult to bring cases to national courts because the HCC stipulates that: "Any dispute concerning its validity, interpretation or performance shall be determined conclusively by arbitration, to the exclusion of the ordinary courts of Switzerland, of the Host Country or of any other country; it shall be decided by the Court of Arbitration for Sport." However, since 2020, attempts have been made in national courts to influence the HR situation in China. For example, France's National Terrorism Prosecution Office has been investigating claims that multinational companies have benefitted from forced labour by Uyghur workers⁴⁰ and in June 2021 HR lawyers lodged a case with the International Criminal Court (ICC) accusing China of crimes against humanity relating to the forced deportation of Muslim Uyghurs from Tajikistan to Xinjiang in China.⁴¹ The ICC agreed to hear this case because Tajikistan recognises the court, even if China (like the United States) does not.

4 Future Olympic Games (from 2024) and HR

In 2006 the UN set up a new HR Council to replace its HR Commission, created 40 years earlier, whose actions were being systematically blocked by governments that did not want to fully respect these rights. The new council is based in Geneva, like the OHCHR. The previous year, UN Secretary-General Kofi Annan had asked John Ruggie, from Harvard University, to produce a set of HR rules for corporations and businesses, rather than just states, which had been the focus of the numerous treaties and conventions drawn up after World War II (see Section 2). Ruggie's wide-ranging consultations resulted in the Guiding Principles on Business and Human Rights, which the HR Council

40 Paola Gaeta. « Les crimes au Xinjiang et les possibilités de la justice internationale », *Le Temps*, 12th July 2021, page 6.

41 Reuters. "Lawyers urge ICC to probe alleged forced deportations of Uyghurs from Tajikistan", 10th June 2021, www.reuters.com/world/asia-pacific/lawyers-urge-icc-probe-alleged-forced-deportations-uyghurs-tajikistan-2021-06-10 (last consulted on 6th April 2023).

adopted in 2011.⁴² Inspired by the concept of corporate social responsibility, the principles extend the responsibility for protecting and fulfilling individual HR from states to companies, which must provide effective remedies – legal or other – if these rights are violated. Most states and companies now recognise these Guiding Principles as soft law. In fact, they were preceded by a similar set of guiding principles for multinationals, drawn up by the Organisation for Economic Cooperation and Development (OECD) from 1976.⁴³ In the 21st century, intergovernmental organisations have pushed for the adoption of codes as soft law rather than much more difficult to adopt treaties or convention.⁴⁴

Initially, the IOC, which is a non-profit association under Swiss law, not a company, did not feel beholden to either set of guidelines. The event that contributed to change its stance on this matter was a little-known complaint concerning FIFA's oversight of preparations for the 2022 World Cup in Qatar. In 2015 the Geneva-based Building and Wood Workers' International (BWI) asked the Swiss National Contact Point (NCP) for the OECD Guidelines for Multinational Companies to consider whether FIFA had failed to address violations of the rights of migrant construction workers employed on World Cup building sites. The NCP accepted BWI's request because FIFA (like the IOC) is based in Switzerland and because it considered FIFA to be functionally a company involved in organising the World Cup. A mediation process between FIFA, BWI and the Qatari government, led by a professor from the University of Zurich, concluded in March 2017 and resulted in a series of improvements to the conditions for workers on World Cup building sites. FIFA facilitated this mediation by adding a commitment to HR to its statutes in 2016. Article 3 of these statutes now states: "FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights." This example shows that grievances can be addressed without resorting to court action.

Qatar had already been the subject of a complaint, filed with ILO in 2014, because the kafala recruitment system used on 2022 World Cup sites (and others) contravene several ILO conventions (of which Qatar is a signatory). Reforms introduced by the Qatari government were sufficient for the ILO to

42 OHCHR. *Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework* (New York and Geneva: United Nations Human Rights Office of the High Commissioner on Human Rights, 2011).

43 OECD. *Guidelines for Multinational Enterprises, 2011 Edition* (Paris: Organisation for Economic Cooperation and Development, 2011).

44 Lucio Baccaro and Valentina Mele, "For lack of anything better? International organizations and global codes", *Public Administration*, 89(2), 2001: 451–470.

drop the complaint three years later, thereby producing a rare example of pressure relating to a sports event forcing a state to respect the HR obligations it had signed up to.⁴⁵ (Unlike Qatar, China has not ratified the ILO's forced labour convention.)

The complaint against Qatar came just a year after the IOC had elected Thomas Bach, a German lawyer, as its new president. One of Bach's idea was to develop closer relations with the UN (which had given the IOC observer status in 2009). A year after his election, the IOC published a strategic roadmap entitled *Olympic Agenda 2020*, whose introduction notes: "The Olympic Agenda 2020 clearly demonstrates our determination to live up to our values and principles. *The new wording of the 6th Fundamental Principle of Olympism, is derived from the United Nations Universal Declaration of Human Rights.* In one point it will now be even more clear because it includes also sexual orientation. This strengthened wording will help us to ensure the respect for all these rights for all participants during the Olympic Games."⁴⁶

The revised sixth principle reinforces the commitment to non-discrimination the IOC had made in 1949 (see Section 2), stating: "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."⁴⁷

Olympic Agenda 2020's citation of the UDHR was the first time the IOC had admitted it had responsibilities towards HR, although these responsibilities covered only contexts directly linked to the Olympics, for example, athletes' participation in the Games or the construction of Olympic facilities. The IOC reiterated its position – which HR activists consider too limited – in its Code of Ethics, whose first article lists some of the "fundamental ethical principles" mentioned in the Olympic Charter since 1991 (see Section 2):

Respect for the universal fundamental ethical principles is the foundation of Olympism. These include: [...] 1.4 Respect for international

45 Franck Latty, Franck (2020) « La FIFA et les droits de l'homme au Qatar », in Horatia Muir Watt et al. (eds.), *Le tournant global en droit international privé* (Paris : Pedone, 2020), pages 187–98.

46 IOC. *Olympic Agenda 2020, 20+20 recommendations* (Lausanne: International Olympic Committee, 2014), pages 4–5, original italics.

47 IOC. *Olympic Charter, in force as of 8 December 2014* (Lausanne: International Olympic Committee, nd [2014]), page 12.

conventions on protecting human rights *insofar as they apply to the Olympic Games' activities* and which ensure in particular:

- respect for *human dignity*;
- rejection of *discrimination* of any kind on whatever grounds, be it race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status;
- rejection of all forms of *harassment and abuse*, be it physical, professional or sexual, and any physical or mental injuries.⁴⁸

The IOC evoked these principles at the end of 2020 when it banned the president of Belorussia and his son (former and current presidents of Belorussia's NOC) and all Belorussian government officials from attending the Tokyo 2020+1 Games. However, this ban was in response to political discrimination against Belorussian athletes who had protested a rigged presidential election, rather than in response to the fact that election rigging violates civil rights.⁴⁹ The IOC also condemned as “deplorable” Belorussia's attempt to force one of its athletes to return home during the Tokyo 2020+1 Olympics – the athlete refused to board the return flight and successfully sought police protection at the airport. (All this happened before the involvement of Belorussia in the invasion of Ukraine by Russia in February 2022.)

In 2016 the IOC created a Refugee Olympic Team to enable displaced athletes to participate in the Olympic Games. Selected and run by the Olympic Refugee Foundation, which is managed within the IOC Administration, the Refugee Olympic Team allowed 29 athletes – from Afghanistan, Cameroon, Congo, Republic of Congo, Eritrea, Iraq, South Sudan, Sudan, Syria and Venezuela (all of whose NOCs took part in the Games under their national flags) – to compete at Tokyo 2020+1.

In 2017 the IOC completely overhauled the HCCs it signs with the hosts of future editions of the Games, starting with the Paris 2024 Summer Olympics and the Milano-Cortina 2026 Winter Olympics. Article 13 of the new HCC states:

- 13.1. The Host City, the Host NOC and the OCOG [local organizing committee] undertake to abide by the provisions of *the Olympic Charter and the IOC Code of Ethics* and agree to conduct their activities

48 IOC. *Code of Ethics and other texts* (Lausanne: International Olympic Committee, 2016), page 13, my italics.

49 Karolos Grohmann. “IOC bans Belarus president Lukashenko and his son from Games”, *Reuters*, 7th December 2020, www.reuters.com/article/uk-olympics-ioc-idUKKBN28H2CZ (last consulted on 6th April 2023).

related to the organisation of the Games in a manner which promotes and enhances the *fundamental principles and values of Olympism*, as well as the development of the Olympic Movement.

- 13.2. Pursuant to their obligations under §13.1, the Host City, the Host NOC and the OCOG shall, in their activities related to the organisation of the Games:
- a. prohibit *any form of discrimination* with regard to a country or a person on grounds of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status;
 - b. *protect and respect human rights and ensure any violation of human rights is remedied in a manner consistent with international agreements, laws and regulations applicable in the Host Country and in a manner consistent with all internationally-recognised human rights standards and principles, including the United Nations Guiding Principles on Business and Human Rights, applicable in the Host Country.*⁵⁰

Paragraph b above clearly states that each HCC concerns only the HR the host country recognises, that is, those included in the treaties and conventions it has ratified, which vary greatly from country to country (see Section 2). The UN Guiding Principles are not a treaty between states, just a declaration (soft law). Moreover, it is the host city and/or region, not the host country, that signs the HCC, although the IOC would like this to change in the future (By-law 3.3 to Rule 33 of the Olympic Charter). Hence, the IOC's approach remains highly legalistic. Nevertheless, for the first time, HCCs explicitly require Olympic Games hosts to adhere to the UN Guiding Principles.

5 Athletes' Individual Rights and Recent Developments

Many athletes in dispute with their sport organisations take their cases to the Court of Arbitration for Sport (CAS), with the possibility of appealing any decisions to Switzerland's supreme court (Federal Tribunal – FT). Because the CAS

⁵⁰ IOC. *Host City Contract, Principles, Games of the XXXIII Olympiad in 2024* (Lausanne: International Olympic Committee, nd [2017]), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Principles.pdf> (last consulted on 6th April 2023), article 13, page 16, my italics.

is based in Switzerland, which ratified the convention setting up the European Court of Human Rights (ECtHR), in Strasbourg, athletes of any nationality who are dissatisfied with a CAS ruling and the result of a subsequent appeal to the FT can lodge a further appeal with the ECtHR. Most such appeals have been founded on the right to a fair hearing. Athletes who have done this include the German speed skater Claudia Pechstein, the Romanian footballer Adrian Mutu, the Turkish footballer Ali Reza and the South-African middle-distance runner Caster Semenya.⁵¹ Semenya's case had still not been resolved by mid-2023.

Some people also maintain that the World Anti-Doping Agency's (WADA) highly intrusive rules (whereabouts, outsiders' witnessing of urine sample takings, strict liability, etc.) infringe athletes' civil rights.⁵² In response to this criticism, WADA has initiated in 2023 an "Initial Human Rights Impact Assessment" to evaluate the intersection between the world anti-doping code and the HR of athletes.

Promoting equal rights for women in the Olympic system is an area in which the IOC has progressed during Bach's presidency. By 2020, 37% of the IOC's members were women and almost half of the seats on IOC commissions were occupied by women.⁵³ At the opening ceremony for the Tokyo 2020+1 Olympic Games, every nation had to nominate two flag bearers – a woman and a man – and the Olympic oath (strengthened to demand non-discrimination) was pledged by a man and a woman together. In addition, the IOC is moving towards total gender parity in Olympic competitions. This contrasts with the situation under Bach's predecessor, exemplified by the IOC's refusal to include a women's ski jumping competition alongside the men's competition at the Vancouver 2010 Games. Women ski jumpers took their case to Canada's Supreme Court, arguing that this decision contravened Article 15 of Canada's charter on rights and freedoms, which forbids discrimination based on gender. However, the Canadian court dismissed the case because the charter only protects people from decisions made by the public authorities, which the IOC is

51 Michele Krech. "Sport sex before the Court of Human Right, Caster Semenya vs. Switzerland", *Asser International Sports Law Blog*, 22nd March 2021, www.asser.nl/SportsLaw/Blog/post/sport-sex-before-the-european-court-of-human-rights-caster-semenya-v-switzerland-by. Also: CAS. *Sport and Human Rights, Overview from a CAS perspective*, report compiled by Estelle de la Rochefoulcaud and Matthieu Reeb (Lausanne: Court of Arbitration for Sport, 2021).

52 For instance: Bart van der Sloot, Mara Paun and Ronald Leenes. *Athletes' Human Rights and the Fight Against Doping: A Study of the European Legal Framework* (Berlin: Springer Verlag, 2020).

53 IOC. *Annual Report 2020* (Lausanne: International Olympic Committee, 2021), page 47.

not.⁵⁴ To avoid further controversy, the IOC added women's ski jumping to the programme for the next Games.

Moves to end discrimination based on an athlete's sexual orientation, which many observers consider an important HR issue,⁵⁵ have raised concerns that transgender athletes will have a competitive advantage if they compete with female athletes. In November 2021, the IOC published a "Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations" recommending that each IF should establish their own rules for their sport. But the issue is far from resolved.

Nine of the world's largest HR NGOs, including HRW, AI and Transparency International, joined forces in 2015 to create the Sports and Rights Alliance (SRA) and thereby "embed human rights in the world of sport." SRA's website explains why the Alliance chose to focus on sport: "Sport has the potential to be a catalyst for human development, unity, and freedom, but too often it instead brings harm to its athletes, fans, and communities. We exist to uncover and rectify the many abuses that exist both in and around sport. We aim to transform sports into an authentic force for good."⁵⁶

Every year since 2016 the Institute for Human Rights and Business (IHRB), the Mega-Sporting Events Platform for Human Rights (MSE Platform) and Switzerland's Federal Department of Foreign Affairs have held a conference in Geneva to explore the challenges and opportunities facing mega-sports events. The IOC's director general attended the first of these Sporting Chance Forums, while its president contributed a video address. The second forum paved the way for the launch, in 2018, of the Centre for Sport and Human Rights (CSHR), a multi-stakeholder initiative involving sport organisations, intergovernmental organisations and NGOs. Originally set up as a subsidiary of the IHRB, the CSHR became an independent, non-profit association under Swiss law, with the ILO, the International Trade Union Confederation, the International Organization of Employers, the Swiss Federal Department of Foreign Affairs, the Commonwealth Games Federation, HRW, the World Players Association and the IHRB as governing members.⁵⁷ In 2023 Mary Robinson, former President of Ireland, former High Commissioner of Human Rights and chair of the MSE

54 Stephen F. Ross. *Global Sports Law* (Cheltenham, UK: Edward Elgar, 2021), page 110.

55 Andreas Ziegler. "Sexual Orientation" in Christina Binder et al. (eds.), *Elgar Encyclopedia of Human Rights* (London: Edward Elgar Publishing, 2022).

56 SRA. "FAQ", *Sports and Rights Alliance website*, <https://sportandrighsalliance.org/why-sport-human-rights> (last consulted on 6th April 2023).

57 CSHR. *Statement upon the Founding of the Centre for Sport and Human Rights on 8th July 2021*, and Centre for Sport and Human Rights Appoints New Directors, incorporate as

Platform (now part of the CSHR), chairs the CSHR's ten-member board. Its operating entity is a UK charity, wholly controlled by the Swiss association. It is financed by donations from its advisory council's 50 member organisations. A team of around 20 employees, based in Geneva and Eastbourne (UK), enable the CSHR to publish regular reports on various aspects of HR in sport (e.g., in 2018, *Championing Human Rights in the Governance of Sports Bodies*). CSHR published a strategy in 2021 under the title "Convergence 2025." The relations between the CSHR and the SRA are unclear.

Although the Swiss Federal Department of Foreign Affairs and other prestigious bodies were some of the CSHR's founders, the IOC decided not to become a member. Instead, in 2018 it created its own HR Advisory Committee, as FIFA had done two years earlier. The committee's first president, Prince Zeid Ra'ad Al Hussein of Jordan, a former High Commissioner for Human Rights, and Rachel Davis, the vice-president of SHIFT, a group of experts on the UN Guiding Principles on Business and Human Rights, drew up a set of Recommendations for an IOC HR Strategy.

One of the committee's most urgent recommendations was for the IOC to set up a specialist unit to bring together the different aspects of its approach to HR, which were dispersed across several departments within its Administration. This was done in 2022 under the Department "Corporate and sustainability development" and an "IOC Strategic Framework on Human Rights" was published in September 2022.

In 2021, following a revised bidding procedure, Brisbane (Australia) won the right to host the 2032 Olympic Games. For the first time, the IOC's bid evaluation report formally assessed a candidate country's commitment to HR issues via indicators such as OHCHR Human Rights Treaty Ratifications, ILO Core Convention Ratifications, the WEF Global Gender Gap Index and the UNDP Human Development Index, etc.⁵⁸ Considering only legal commitments to HR, the report for Brisbane noted that Australia had ratified 14 of the 18 main treaties listed by the OHCHR and 7 of the 8 conventions highlighted by the ILO.

Also in 2021, the European Union began considering legislation to make HR and environmental due diligence mandatory. Should this legislation be passed,

an independent entity in Switzerland, www.sporhumanrights.org/news/statement-upon-the-founding-of-the-centre-for-sport-and-human-rights-on-8-july-2021 (last consulted on 6th April 2023).

58 IOC. *Feasibility assessment – Olympic Games, Brisbane* (Lausanne: International Olympic Committee, February 2021), page 13.

it will directly affect sport (and other) organizations based in (or dealing with) the EU.⁵⁹

In February 2022 the issue of athlete non-discrimination came back to fore with the IOC's recommendation to ban Russian and Belarussian athletes from international competitions because of the invasion of Ukraine by Russia with the help of Belorussia. This recommendation was followed by most IFs, but the IOC changed it at the beginnings of 2023 to recommend participation of Russian and Belarussian athletes in IFs' events under "strict neutrality" conditions. The IOC said that this recommendation was done in order to respect the non-discrimination principle enshrined in the Olympic Charter (sixth fundamental principle) and the UDHR, and also to allow these athletes to qualify for the Olympic Games by eventually reaching the minimum standards set by the IFs. The new recommendation did not deal with the participation in the forthcoming Olympic Games but the Ukrainian and other NOCs, as well as several governments did not accept it and threatened to boycott the Paris 2024 Olympics. The argument of the Ukrainian NOC was that non-discrimination is not absolute and can be surpassed by wider considerations such as those mentioned by CAS when the Football Union of Russia unsuccessfully contested its exclusion of the 2022 World Cup qualification matches. At the time of writing (mid 2023), it is not certain at all that Russia and Belorussia will participate in the 2024 Olympics.

6 Conclusion

As the preceding discussion shows, the Olympics' relationship with HR has evolved in parallel with changes in society's conception of HR. Just as this conception has expanded to encompass sport and sports events, the IOC and Olympic Games have gone from a narrow focus on non-discrimination (religious and/or racial discrimination at Berlin 1936 and at the Olympic Games of the 1960s and 1970s) to embracing a more comprehensive palette of HR that includes the rights of ethnic groups and indigenous peoples, the right to freedom of expression and information (notably during Olympic Games held in China), athletes' rights and gender equality (notably at Tokyo 2020+1). The IOC's current president, Thomas Bach, has been particularly instrumental in changing the IOC's stance toward HR, and it is now accepted that the Olympic

59 Danielle van Kalmthout et al. "Mandatory environmental and human rights due diligence", *National Library of Medicine*, published online 22th March 2021. doi: 10.18332/tid/133750

Games has a responsibility towards HR. The questions the IOC needs to answer now are which rights, for who, how should they be addressed and how far do its humanitarian responsibilities extend? The war in Ukraine imposed by Russia will serve as a major test of this issue at Paris 2024.

Whereas the HR treaties and conventions signed during the 20th century concerned only states, the UN Guiding Principles for Business and Human Rights, adopted in 2011, were designed specifically for commercial enterprises. These include sport organisations, sports equipment companies and sports sponsors, especially multinationals.⁶⁰ Most owners and organisers of major sports events and their extensive networks of stakeholders, including nearly all the IOC's TOP Olympic Partners, have now signed up to the UN Guiding Principles. However, as Hunt noted for governments, "human rights are easier to endorse than enforce."⁶¹ This is especially true for sport organisations, which have few coercive measures at their disposal other than cancelling or moving an event (as the International Ice Hockey Federation did when it withdrew its 2021 Men's World Championships from Belorussia; or when many IFs moved their events out of Russia in 2022), or suspending a member country, which risks penalising its athletes by preventing them taking part in competitions. Imposing sanctions is made even more difficult by the fact that HR are often violated in non-Olympic and non-sporting contexts,⁶² so it is easy for the IOC to justify not taking action on the grounds that it cannot mitigate situations the UN itself cannot resolve. Nevertheless, the UN's numerous conventions and declarations carry a lot of moral weight.⁶³

Of course, focusing on just four moments in the Olympic Games' relationship with HR has limitations because it overlooks developments during the years between these moments. Nevertheless, it shows how far the two ideas have travelled over a period of almost a century. Some scholars see in the Olympic Games' relationship with HR an evolution in Olympic discourse from the amorphous ideal of promoting peace, which dates back to the time of Pierre de Coubertin and the foundation of the IOC, to a more contemporary

60 Olivier de Schutter (ed.) *Transnational Corporations and Human Rights* (Oxford: Hart Publishing, 2006).

61 Lynn Hunt, *Inventing Human Rights: A history* (New York: Norton, 2008).

62 Peter Donnelly. "Sport and human rights", in Steven Jackson and Steven Haigh (eds) *Sport and Foreign Policy in a Globalizing World* (London, Routledge, 2009), pages 33–46.

63 Hans-Erik Naess (2019) "Good Intentions, Vague Policies: A thematic Analysis of Recommendations by the United Nations, the European Commission and the OECD on Sporting Events and Human Rights", *Journal of Global Sport Management* 4(1) 2019, pages 25–37.

discourse on HR.⁶⁴ This is not wrong, in so far as HR are fundamentally interwoven into the Olympic movement's ideals of fair play and human dignity, both for individuals and, increasingly, society as a whole. It remains to be seen how these ideals will be put into practice in the years to come.

At the same time, sport's relationship with HR is giving rise to a new field of research at the frontiers of domestic and international HR law and the transnational sports law produced by organisations such as the IOC, IFS and WADA.

64 Barbara Keys (ed.). *The Ideals of Global Sport, From Peace to Human Rights* (Philadelphia: University of Pennsylvania Press, 2019), pages 1–14.