

HOW POWERFUL IS THE IOC? – LET’S TALK ABOUT THE ENVIRONMENT

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Abstract

The International Olympic Committee (IOC) is in a unique position as the supreme administrator of an immensely popular international event and a self-proclaimed champion of environmental issues and sustainable development. Every two years, cities from all over the world spend millions of dollars for the mere privilege of competing to host the Olympic Games, and those cities must play by the IOC’s rules. Article 2 of the Olympic Charter, the constitution-like instrument governing the IOC and the Olympic Movement, requires the IOC to ensure that the Olympics are held to promote sustainable development and show concern for the environment. Given the Olympic Charter, one would assume the IOC uses its influence to the utmost to demand an ecologically sound Olympic Games. Unfortunately, despite modest improvements in the Olympics’ environmental footprint through education and non-binding goals, the Olympic Games remain an unsustainable goliath.

This article asserts that imposing binding environmental requirements on Olympic host cities is the most effective tactic for the IOC to ensure truly sustainable Games. To this day, the IOC

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has refrained from imposing such environmental requirements despite its power to do so and its commitment to the environment. Part I of this article details the history of the IOC's interest in environmental well-being. Part II examines the current and historical efforts of the IOC to influence host cities to execute environmentally friendly Olympic Games. Part III discusses the successes and failures of those tactics, paying particular attention to the Beijing 2008 Games. Part IV provides a thorough analysis of the IOC's source of authority to impose binding environmental standards for the Olympic Games. In addition, this section analyzes a contract theory, an international treaty theory and a customary law theory for its authority, and discusses the methods available to enforce such binding requirements

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INTRODUCTION

Staging the Olympic Games is an enormous burden on the environment. Hundreds of thousands of stimulated consumers gather in dense temporary population centers for a two-week romp, which is as sustainable as a newborn treading water. The 2010 Winter Games in Vancouver and Whistler is expected to have produced 1,200 metric tons of waste,¹ not including the excrement of athletes and attendees. Environmentalists claim 100,000 trees, including four acres of old growth, were razed for the temporary Celebration Plaza,² massive amounts of water were diverted from the Cypress Watershed for artificial snow³ and 68,000 kilograms of ammonia was used to keep an ice track frozen.⁴

London expects about 200,000 international visitors will travel to the city for the 2012 Games, releasing tens of thousands of tons of greenhouse gasses in the process.⁵ On top of the energy expended for travel to London, heating, cooling and electricity for dozens of sport venues and housing structures, and travel within the city will require a significant amount of energy. ED NOTE: citation needed. Not to mention the embodied energy of construction materials and installation for the new facilities throughout the city.

The International Olympic Committee (IOC), the supreme authority for the Olympic Games, understands the Olympics' profound impact on the planet, but has only tried to mitigate it where convenient. Without specific environmental standards for the Games, the IOC continues to underachieve in its quest to

¹ Wendy Stueck, *Trash Talk*, GLOBE & MAIL(Canada), Oct. 10, 2009, at S1.

² No 2010 Olympics on Stolen Native Land, <http://www.no2010.com> (last visited Jan. 31, 2010).

³ *Id.*

⁴ *Id.*

⁵ Danny Brierley, *London 2012 'not as green as advertised,'* LONDON EVENING STANDARD, May 8, 2008, <http://www.thisislondon.co.uk/standard-olympics/article-23526374-london-2012-not-as-green-as-advertised.do>.

protect the environment from the Olympic burden. In 1996, the IOC passed an amendment to the Olympic Charter, adding environmental sustainability as a mission of the IOC and mandating the Olympic Games be held to promote sustainable development.⁶ Since the incorporation of the environmental pillar into the foundation of the Olympic Movement's (OM) mission, countries began to tout their green credentials in an effort to convince the IOC to select their candidate city to host the Olympic Games.⁷ The world first observed the green campaign approach with Sydney's bid for the 2000 Olympics, where the Sydney Olympic planning group presented a plan that considered the environmental impact for the first time in history.⁸ Ever since, bidding cities have portrayed their plans as environmentally sustainable and friendly, and now the IOC requires host cities to consider the environmental impacts.⁹

Cities bid to host the Olympics for a variety of reasons. While the economic benefits of hosting the Olympic Games are debatable,¹⁰ cities clearly desire to host the Games as demonstrated by the number of applicants and heated competition every two years.¹¹ Cities around the world invest millions of dollars just to fulfill the IOC requirements to bid for the Games.¹² The powerful

⁶ Olympic Charter, art. 2, para. 13.

⁷ See Part III.

⁸ Stefanie Beyer, *The Green Olympic Movement: Beijing 2008*, 5 CHINESE J. INT'L L. 423, 423 (2006).

⁹ See Part II-III.

¹⁰ See Darren McHugh, *A Cost-Benefit Analysis of an Olympic Games* (Aug. 2006), available at <http://ssrn.com/abstract=974724>.

¹¹ See e.g. Juliet Macur, *President Obama Will Go to Copenhagen to Lobby I.O.C.*, N.Y. TIMES, September 29, 2009.

¹² International Olympic Committee, *Manual for Candidate Cities for the XXI Olympic Winter Games 2010* (requiring payment of a \$500,000 candidature fee and submission of a detailed candidature file with significant costs before the election of the host city); Gene Wojciechowski, *IOC all about the money*, ESPN CHICAGO, Sept. 30, 2009, http://sports.espn.go.com/chicago/columns/story?columnist=wojciechowski_gen

allure of hosting the Olympics can provide a means for enforcing future obligatory requirements for host cities. Utilizing this allure, the IOC should require host cities to abide by specific environmental standards. In addition, political coercion, and contract, treaty and customary international law theories of enforceability would strengthen compliance.

Indeed with an evolving conception of what international law encompasses, one can argue that the international community gives consent with *opinio juris* to the supreme authority of the IOC in the world of the Olympic Games.¹³ Under this theory, the IOC can dictate precisely how the Olympic Games will operate with the force of law.¹⁴

Where some may reject the concept of binding international sports law and incorporating jurisdiction over environmental standards for the Olympics, multi-lateral agreements vest complete power in the IOC for every Olympic Games, and contracts can easily include binding environmental provisions for host cities.¹⁵

In spite of substantial bargaining power and legal support, the IOC has failed to impose specific mandatory environmental standards for the Olympic Games, instead, pursuing the ideal of “environment and sport” through non-binding recommendations and cultivating increased awareness. While these efforts have produced some advancement in making the Olympic Games more sustainable and decreasing its environmental impact, there remains significant room for improvement. The potential of host cities in the environmental realm remains unfulfilled.

e&id=4519409 (last visited Jan. 31, 2010) (Chicago’s bid to host the 2016 Olympic Games cost at least \$48 million).

¹³ See Part IV(C).

¹⁴ *Id.*

¹⁵ See Part IV(A)-(B).

I. The Olympic Movement's Interest in Environmental Well Being

The principal issue this article examines is whether the IOC possesses the legal and practical authority to impose binding environmental regulations or requirements on a host city for the Olympic Games. Before answering, it is important to understand why the IOC would be motivated to do so in the first place. The IOC should act because the potential for environmental disaster is substantial and the IOC has already expressed its stance by officially placing environmental concerns into the Olympic Charter, for all the Olympic Movement (OM).¹⁶

First, history has provided clues to inform society how poisoned our planet can become when permitted to develop unchecked. For example, all across the United States, the scars of industrialization reveal the consequences of under-regulated development.¹⁷ From Great Britain to the United States to modern China, time and again, under-regulated development breeds dangerous environmental problems,¹⁸ and the realm of the Olympic Games, although on a smaller scale, is no different.

Second, the IOC officially recognized the OM's interest in a healthy environment with an amendment to the Olympic Charter. The IOC amended Article 2, adding environmental sustainability

¹⁶ Olympic Charter art. 1 (the Olympic Movement is the aggregate entity that includes all those guided by the Olympic Charter); Olympic Charter art. 2, para. 13.

¹⁷ See Summary of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), 42 U.S.C. § 9601 (1980) (superfund sites dot the landscape from coast to coast, identifying some of the most hazardous localities where groundwater is rendered poisonous, residents develop cancer and radioactive debris remains within steps of people's homes, among other horrors, all posing substantial threats to human health).

¹⁸ See generally JOHN BELLAMY FOSTER, THE VULNERABLE PLANET – A SHORT ECONOMIC HISTORY OF THE ENVIRONMENT (1999) (exploring how a global economic system aimed at private profit has made the planet vulnerable to environmental crisis).

as a mission of the IOC and requiring that the Olympic Games be held to promote sustainable development.¹⁹ Today's Charter reads: "The mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement. The IOC's role is: . . . to encourage and support a responsible concern for environmental issues, to promote sustainable development in sport and to require that the Olympic Games are held accordingly."²⁰

The Olympic Charter is a constitution-like instrument, defining the rights and obligations of the IOC, the International Federations (IF) and the National Olympic Committees (NOC), as well as the Organizing Committees for the Olympic Games (OCOG).²¹ All these constituents of the OM are required to comply with the Olympic Charter.²² Therefore, the IOC, "the supreme authority" of the Olympic Movement and whose decisions the entire Olympic Movement must follow,²³ must ensure that the Olympic Games promote environmental well-being.

II. Current and Historical IOC Efforts to Influence Host Cities to Execute Environmental Olympic Games.

The IOC has taken this Charter-given authority relatively seriously, creating a Commission, partnering with the United Nations Environment Programme (UNEP), and adding the relevant language in its agreements with host cities.²⁴ Even before the

¹⁹ Olympic Charter art. 2, para. 13.

²⁰ *Id.*

²¹ *Id.*, Introduction para. a and c.

²² *Id.*

²³ *Id.*, Fundamental Principles of Olympism, principle 3; *Id.* art. 1 para. 1-2.

²⁴ *The Sport and Environment Commission*, OLYMPIC.ORG, <http://www.olympic.org/en/content/The-IOC/Commissions/Sport-and-Environment/> (last visited Nov. 20, 2009) (In 1994, after the Olympic Games, the IOC and UNEP "signed a cooperation agreement...to develop joint initiatives in this field.").

amendment, the President of the Session²⁵ created the Sport and Environment Commission (SEC) in 1995.²⁶ An IOC commission is an advisory working group that exists at the pleasure of the Session President.²⁷ The SEC does not have the power to create binding environmental standards for host cities, but seeks to promote ecologically sustainable development within its abilities.²⁸

The international commission meets once per year, and NOCs are encouraged to establish their own local commissions.²⁹ In addition, the SEC hosts the World Conference on Sport and Environment, held biennially with the aim of assessing and encouraging sustainable development progress within the OM and providing a forum for information sharing.³⁰ Since 1997, the IOC has organized annual Regional Seminars on Sport and Environment for NOCs to raise awareness and promote sustainable development through sport.³¹

One of the major IOC initiatives aimed at sustainable development was the adoption of an Agenda 21 for the Olympic Movement. Agenda 21 is a United Nations sustainable development program established at the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro.³² The meeting of nations announced a new global partnership to meet social and ecological challenges.³³ The preamble to Agenda 21 lays the foundation for the importance of environmentally sustainable development due to disparity of wealth, hunger,

²⁵ Olympic Charter art. 18, para. 1 (The Session is the supreme organ of the IOC, whose decisions are final.).

²⁶ See *The Sport and Environment Commission, supra.* ..

²⁷ Olympic Charter art. 21.

²⁸ See *The Sport and Environment Commission, supra.*

²⁹ *Id.*

³⁰ See *Id.*

³¹ *Id.*

³² *Preamble para. 1.1*, EARTH SUMMIT AGENDA 21, June 3-14, 1992, <http://www.un.org/esa/dsd/agenda21/index.shtml>.

³³ *Id. Section I, para. 2.1.*

poverty, and ecosystem devastation.³⁴ Agenda 21 is a plan of action, but “by its terms, only ‘soft law’ (that is, not legally binding . . .).”³⁵ The UN encouraged all international, regional and local organizations to develop personalized Agenda 21s, and the OM responded.³⁶ The IOC adopted the OM Agenda 21 in June 1999, and the OM endorsed it that October.³⁷

In the forward to the OM document, IOC President Juan Antonio Samaranch wrote, “the IOC undertakes to use *all* its influence to achieve the objectives outlined in the Olympic Movement’s Agenda 21.”³⁸ Yet the IOC has not used its power to impose specific binding requirements or regulations to achieve its objectives. Instead, the President “invited” the OM to comply with the Agenda 21 recommendations the best they can, yet demanded no meaningful obligations.³⁹

The Agenda 21 document made a moderate splash in the conduct of the OM and was quite thorough in scope. The document covers issues from the conduct of sporting goods industries,⁴⁰ to energy use, to water consumption.⁴¹ The document’s language, however, removed any illusion that the document imposed binding standards on members. “All the

³⁴ *Id.*

³⁵ Stephen Kas & Jean McCarroll, *New York’s Green Olympics*, 225 N.Y.L.J. 3 (2001).

³⁶ Juan Antonio Samaranch, Olympic Movement’s Agenda 21, Foreword, Oct. 21-24, 1999, at 8.

³⁷ Endorsed at the Third World Conference on Sport and the Environment in Rio de Janeiro. ED NOTE: citation needed.

³⁸ Samaranch, *supra*, at Foreword.

³⁹ *Id.* (emphasis added).

⁴⁰ *Id.* para. 3.1.2 (“The sports goods industries should promote sustainable management of resources notably through the use of materials and processes which are compatible with such sustainable management of resources.”).

⁴¹ *Id.* para. 3.1.4 (emphasis added) (“The whole Olympic family is committed to taking active steps to promote – through *regulation*, education and example – patterns in the consumption of goods, particularly sports goods, water and energy which meet the requirements of sustainable development.”).

organizations and individuals linked to the Olympic Movement will *voluntarily* institute plans to reduce or control the Movement's expenditure of energy, adapted to specific economic regional situations."⁴²

The OM's Agenda 21 outlines the grand potential for environmental improvement of the Olympic Games. Article 3 of the Agenda summarizes the impact the OM could have on construction, among the costliest demands of hosting the Games.⁴³ It seeks to introduce sustainable design and construction into the creation of new sports facilities, focusing on building materials, water and energy use, and waste management.⁴⁴ The OM Agenda 21 specifies pre-construction environmental impact studies as a goal of providing increasingly sustainable Games from year to year.⁴⁵

Simon Balderstone, a member of the SEC and former general manager of the Sydney Olympic Games Organising Committee, articulated the potential for the OM to implement the goals of its Agenda 21 through its influence, even absent host city domestic requirements. Balderstone recognized that with the current system, local laws may determine goals for complying with Agenda 21, but added, "[t]hat is, however, where the Olympic Movement can, because of its profile and size, prove to be a leader, a catalyst, for change . . ."⁴⁶

To guide the OM Agenda 21 more concretely, the SEC published the *Manual on Sport and Environment*, revised in

⁴² *Id.* para. 3.1.4 (emphasis added).

⁴³ *Id.* para. 3.1.6 & 3.2.3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Simon Balderstone, Agenda 21 and IOC Requirements: Olympic Games and Architecture – The Future for Host Cities Joint Conference IOC/IUA 4 (May 2001).

2005.⁴⁷ It provides an entire section titled “Large Scale Sports Events: Specific Recommendations.”⁴⁸ That section unequivocally states that the high concentration of people inherent to large-scale sporting events creates a potential danger to the environment and that measures must be taken to limit the impact.⁴⁹ Despite separate headings for different areas requiring heightened attention for environmental consideration—including Sports facilities, Sports Equipment, Transportation and air quality, Energy, Waste management, Environmental message to the public, and Finance”—the Manual falls short of the specificity associated with enforceable standards for hosting the Olympics.⁵⁰ The Manual indicates no numbers or calculations setting limits on materials, energy consumption or emissions, rather listing factors for consideration.⁵¹

In addition to these publications, IOC members, who have the power to select or reject a host city for the Olympic Games, frequently voice environmental expectations to candidate cities. For example, before selecting Beijing for the 2008 Olympic Games, IOC officials made clear to China that they expected all air and water quality in Beijing to fall within World Health Organization standards.⁵² But in the summer of 2008, Professor Tseming Yang predicted that Beijing compliance with those standards “appears rather doubtful at this point,”⁵³ yet no formal consequences befell Beijing.

⁴⁷ International Olympic Committee, Manual on Sport and Environment, chapter II para. 2.5.4 (2005).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See Id.*

⁵¹ *Id.*

⁵² Tseming Yang, *The Implementation Challenge of Mitigating China’s Greenhouse gas Emissions*, 20 GEO. INT’L ENVTL. L. REV. 681, 693 n. 58 (2008) (quoting International Olympic Committee, Report of the IOC Evaluation Commission for the Games of the XXIX Olympiad, at 62 (Apr. 3, 2001)).

⁵³ *Id.*

The closest the IOC has come to imposing specific binding standards for environmental protection lies in Theme 4 of the *Manual for Candidate Cities*: “Environmental Protection and Meteorology.”⁵⁴ The Manual specifies that the IOC will consider the environmental impact of a plan in its selection of a host city, but merely makes such consideration one of several factors, which provides no clarification about how much weight the environmental factor will carry.⁵⁵ Ultimately, however, the Manual makes clear to candidates that “[t]he main responsibility for the environment, [rests] with the Candidate and Host Cities, as a function of governance and legislation.”⁵⁶ The Manual continues to *recommend* that candidate and host cities pay special attention to twelve points vis-à-vis the environment, ranging from architectural design to sewage treatment.⁵⁷

So long as action by the host city to protect the environment remains discretionary, host cities will not maximize their ability to ensure environmental safeguards. As Balderstone described, “[t]he key [to influencing sustainable development through the Olympic Games] is the more bid committees and organisers feel they need to and can include environmental considerations and measures, the more they will do it. The more they feel it could advantage them, or disadvantage them if they do

⁵⁴ International Olympic Committee, *Manual for Candidate Cities for the XXI Olympic Winter Games 2010*, theme 4: Environmental protection and meteorology.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* (The twelve areas are: architecture, design and landscaping, reuse of facilities wherever applicable, restoration of derelict areas, avoidance of destructive land use, protection of habitats and biodiversity, minimise consumption of non-renewable resources, minimise emissions of pollutants, sewage treatment, solid waste handling, energy consumption, water and air quality, environmental awareness.).

not reach that much higher benchmark and go beyond it, the greater the effort.”⁵⁸

III. Modest IOC Success With Tactics to Promote Concern for the Environment

Turning to the effectiveness of the modest approaches the IOC has taken to protect the environment, it is clear that those efforts, despite some improvements, fall short of achieving their goals. The Olympic Games have come a long way since incorporating sustainable development into its ideals.⁵⁹ Comparing the legacy of the Games since Sydney 2000 to that of Albertville, France in 1992 illustrates this change. In the French Savoy region, the Olympics dramatically and irreparably disfigured the landscape.⁶⁰ Developers exploded entire sides of mountains and razed large swaths of trees.⁶¹ Built in an avalanche zone, the bobsled course was cooled with 45 tons of ammonia.⁶² In contrast, many view Sydney 2000 as the most comprehensive environmental development plan to date.⁶³

A. Sydney 2000

Working closely with Greenpeace, the Sydney Organizing Committee (SOC) was mindful of environmental concerns from the outset of its bid to host the Games. ED NOTE: citation needed. In September 1993, SOC released the *Environmental Guidelines* which “specif[ied] design, construction, merchandising, ticketing and catering systems that will meet environmental standards,” even

⁵⁸ Balderstone, *supra* at 3.

⁵⁹ See Part II.

⁶⁰ Beyer, *supra*, at 427.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Roderick McGeoch, *The Green Games: The Legal Obligations That Have Arisen From the ‘Green’ Bid*, 22 U.N.S.W.L.J 708, 709 (1999) (“Greenpeace and the Olympic organizers worked in close association to develop the most environmentally comprehensive bid ever.”).

requiring tickets printed with non-toxic ink on recycled and recyclable paper.⁶⁴ The Olympic Village in Sydney was viewed as the largest solar-powered suburb in the world.⁶⁵

But while the goals of the *Environmental Guidelines* provided a thorough roadmap for Sydney's ecological welfare, the Sydney Games failed to fulfill all of its promises, likely because of a perception that no consequences would result from falling short. The non-profit organization Green Games Watch 2000 (GGW2000)⁶⁶ compiled a report in 1999 examining compliance with the *Environmental Guidelines*, which found violations.⁶⁷ The report cited non-compliance with adequate public transportation, a failure to recycle or treat storm water and sewage effluent, and insufficient cleanup of toxic sites.⁶⁸ In fact, the frequency of non-compliance led environmental groups to label Sydney's green focus as greenwash, or a mere marketing ploy.⁶⁹

The incidents of non-compliance with the *Environmental Guidelines* also led to a Greenpeace lawsuit in Australian federal court against the Olympic Coordination Authority to enforce the environmental promises of the Game's organizers.⁷⁰ The claim rested on the Australian SOC statute for the Olympic Games Act of 1993, enacted after Sydney won its bid, which committed to the *Environmental Guidelines*⁷¹ "to fullest extent practicable."⁷² The Act also committed the SOC to "the principles of Ecologically

⁶⁴ *Id.*

⁶⁵ *Id.* at 710.

⁶⁶ *Id.* at 718 (A coalition of the National Parks Association, Australian Conservation Foundation, Nature Conservation Council of NSW, National Toxics Network, and Total Environment Care).

⁶⁷ *Id.* at 710.

⁶⁸ *Id.*

⁶⁹ *Id.* at 711.

⁷⁰ *Id.*

⁷¹ *Id.* at 712.

⁷² *Id.* at 713.

Sustainable Development [sic],”⁷³ but later diminished the commitment, saying the “OCA must *consider* consistency with the *Environmental Guidelines*.”⁷⁴ In court, Greenpeace claimed *inter alia* that committing to use certain refrigerants in the *Guidelines* was misleading and deceptive conduct, contrary to the Australian Trade Practices Act of 1974.⁷⁵

In his analysis of the enforceability of a strict reading of the *Guidelines* for the Sydney Games, attorney Roderick McGeoch, leader of Sydney’s bid to host the 2000 Games, noted that compliance with the *Environmental Guidelines* was merely discretionary, not mandatory⁷⁶ and concluded that “imposing absolute liability for compliance would be unworkable” because of the need for flexibility when conducting an event on such a large scale.⁷⁷ But McGeoch identified a huge cost of allowing such flexibility. “Selective compliance tends to produce only the most superficial responses to environmental responsibilities . . . ,” he wrote. “The fact that organizations are able to adopt only some measures might demonstrate the inadequacy of a discretionary approach to compliance.”⁷⁸

The host city contract⁷⁹ signed by the IOC, the Australian National Organizing Committee and the city of Sydney provided further clarification that without binding standards originating with the IOC, compliance with any environmental commitments remained discretionary. While the contract was a binding legal agreement, the environmental specifications, without defined environmental standards to agree to, remained vague. Clause 15 of the contract provided that:

⁷³ *Id.* at 712.

⁷⁴ *Id.* at 713 (emphasis added).

⁷⁵ *Id.* at 711.

⁷⁶ *Id.* at 713.

⁷⁷ *Id.*

⁷⁸ *Id.* at 715.

⁷⁹ *Id.* (“Governed by Swiss Law.”).

The City and the NOC acknowledge and agree that respect for the environment is an important consideration and undertake to carry out their obligations and activities under this Contract in such a manner that they comply with applicable environmental legislation and, whenever and wherever possible, serve to promote the protection of the environment.⁸⁰

McGeoch voiced his skepticism about any impact such vague specifications can achieve, writing “[e]ven though the environmental provisions in the Host City Contract is thus legally enforceable, what real impact can it have? The parties may ‘acknowledge’ that environmental protection is an ‘important consideration’ and should be taken into account ‘whenever and wherever possible’, but there is not compulsion to act.”⁸¹ This analysis identifies a key problem with the IOC imposing environmental considerations without providing specific environmental standards.

While one could argue that the contract already bound the host city to the specifications of the *Environmental Guidelines* yet failed to ensure compliance, this argument relies on a fuzzy contract definition that incorporates the *Environmental Guidelines* into a representation made by the bid and ignores the fact that every discussion of the *Environmental Guidelines* and the document itself portray the *Guidelines* as non-binding aspirations.⁸²

⁸⁰ *Id.* at 716 (quoting Sydney 2000 Host City Contract (Feb. 1994)).

⁸¹ *Id.*

⁸² The argument goes that since Clause 8 of the host city contract specified that “[a]ll representations . . . contained in the City’s bid documents . . . shall be binding” and the *Environmental Guidelines* were part of the representation made by the bid, Sydney is bound by the Environmental Guidelines (quoting Host City Contract, *supra*, at clause 8.).

Despite the failure to meet all their environmental goals, more recent bid proposals and Host City programs have begun to understand that environmental consideration was an important element, and “rather than saying they could not afford to do it, realised they could not afford to ignore it.”⁸³

B. Beijing 2008

In 2008, emphasis on the environment reached a new level due to the notorious environmental reputation of China, the 2008 host country widely seen as one of the planet’s biggest polluters.⁸⁴ The enormous attention and pride placed on Beijing as a “Green Games” makes the 2008 Beijing Olympics a good case study for how environmentally sound an Olympic Games can be without binding IOC environmental requirements.

In preparation for the 2008 Games, UNEP and the Beijing Organizing Committee of the Olympic Games (BOCOG) signed a Memorandum of Understanding in November 2005 and in a 2007 report reviewing the environmental efforts of BOCOG, UNEP concluded that Beijing was on track to meet its environmental commitments.⁸⁵ Indeed, the 2009 *UNEP Independent Environmental Assessment of the Beijing Games* highlighted many areas where Beijing delivered on its environmental commitments and even identified some areas where the Chinese surpassed expectations. But the question remains: were the self-imposed commitments themselves adequate? It is one thing to adopt ambitious goals and see them through and it is another to set low expectations, meeting them easily.

⁸³ Simon Balderstone, *supra*, at 2.

⁸⁴ See Joseph Kahn & Jim Yardley, *As China Roars, Pollution Reaches Deadly Extremes*, Aug. 26, 2007, *The New York Times*, (the article is part of “a series of articles and multimedia examining the impact of China’s epic pollution crisis” Choking on Growth).

⁸⁵ United Nations Environment Programme, *Independent Environmental Assessment: Beijing 2008 Olympic Games*, Feb. 2009, at 15.

The 2009 UNEP review, discussing Beijing's environmental measures and assessing their effectiveness,⁸⁶ recognized several instances where Beijing met its environmental commitments, only to conclude that such commitments may not have made such a large impact after all. In the realm of waste management, the review acknowledged that Beijing achieved its domestic solid waste, hazardous waste, and Olympic venue classification and recycling commitments.⁸⁷ But the UNEP review continued, "[i]t is still difficult to determine whether or not Beijing has a safe urban domestic waste disposal system . . ." ⁸⁸ If Beijing's targets could not even ensure safe waste disposal, the goals seem deficient.

As for energy use, the review identified reducing coal use and improving efficiency and air quality as priorities for Beijing.⁸⁹ But Beijing mostly accounted for its expanded energy demands with increased use of natural gas, utilizing a relatively clean fossil fuel, instead of renewable energy sources,⁹⁰ or simply relocated highly polluting factories outside the city instead of upgrading industry practices.⁹¹

But even with these observed inadequacies, UNEP recognized the merit in using the Olympic Games to impose environmental expectations on the host city. The Beijing Report concluded that the Beijing Games incorporated some positive environmental technologies and served as a showcase for some

⁸⁶ *Id.* at 10

⁸⁷ *Id.* at 83.

⁸⁸ *Id.*

⁸⁹ *Id.* at 54.

⁹⁰ *Id.* at 54, fig. 4.2.

⁹¹ Lo Sze Ping, *China's Environment After the Olympics*, 35 Ecology L. Currents 100, 105 (2008).

cutting edge practices in energy use.⁹² Further, 20% of the power used in venues reportedly came from renewable energy.⁹³

Had the IOC required a higher percentage of renewable electricity sources, would Beijing have met it? It is plausible. The IOC should have tried, considering the enormous amount of coal Beijing still uses, accounting for 40 percent of its total energy consumption.⁹⁴ That level of SO₂ and CO₂-rich coal combustion has significant environmental consequences.

Of course, as with any stringent regulation, the risk of specifying an unrealistic requirement that the host city will interpret as hopeless from the outset is that it will make no attempt to meet it. But this paper does not seek to identify specific numbers, materials or systems that the IOC should require. Such problems require careful economic and engineering analysis. This article merely seeks to identify a motivation for imposing requirements and present an argument for the legal enforceability of such standards.

An important positive legacy of the Beijing Games was the detailed monitoring scheme created to evaluate compliance with its self-imposed environmental guidelines. As previously mentioned, Beijing succeeded in meeting many of its commitments, demonstrating a successful model for supervising the implementation of environmental regulations that the IOC could adapt for future Olympics subject to specific IOC standards.

For example, BOCOG developed detailed guidelines for each of the three construction classes used to build the Games to ensure construction and design sustainability.⁹⁵ BOCOG created a separate document for general “Olympic Projects,” “Renovated or

⁹² UNEP, *supra*, at 54.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 90-96.

Expanded Olympic Projects,” and “Temporary Projects,” providing recommendations on a number of categories.⁹⁶ While the monitoring system succeeded, the specifications themselves left room for improvement. Despite the purported progressive recommendations for the Beijing venues, of the 37 Olympic venues, less than half utilized already existing structures and nine were temporary, disposable structures.⁹⁷ No matter how “green” a developer makes a building, if it is only used for two weeks and then demolished, it is the antithesis of sustainable. While China made great strides to internalize environmental costs of the Olympic Games, there were many missed opportunities.⁹⁸

⁹⁶ *Id.* at 90 (“recommendations on venue planning and design, focused on energy conservation in buildings, eco-friendly materials, water resources protection, waste management and noise pollution . . . All newly-built competition and non-competition venues. . . had to comply with the guidelines . . . The 2008 Headquarters Office controlled and monitored building site compliance with safety, quality and environmental standards, in conjunction with BOCOG.”); Greenpeace, *Environmental Assessment: Beijing 2008 Olympic Games*, at 7 (In contrast, Greenpeace’s report on China and the Beijing Games claims “the non-binding nature of [environmental construction and procurement] guidelines may have weakened their implementation.”)..

⁹⁷ UNEP, *supra*, at 90 (“Of the 37 venues [used in the Olympics], 14 were newly built, 14 were renovated and nine were temporary structures”).

⁹⁸ *Id.* at 4-6 (“Beijing’s green Games efforts do not meet the comprehensive approach of the Sydney Government before and during the 2000 Games . . . Olympic venues continued to rely heavily on climate-damaging HFC technology, thereby missing an opportunity to leap directly from ozone-depleting to climate-friendly natural refrigeration . . . while innovative water reuse technologies and renewable energy technology were installed in Olympic venues, more could have been done to incorporate these technologies more broadly into the city’s infrastructure.”); Greenpeace, *supra*, at 6-7 (“Although BOCOG has introduced environmental guidelines for Olympic timber purchasing, they missed a chance to introduce an internationally recognizable timber procurement policy, such as Forest Stewardship Council (FSC) standards for construction material used during the Games . . . Even though some water saving technologies were used at the rowing and canoeing park, they could have been “more widely applied to all venues as well as across the rest of the city to alleviate the continued reliance of the Games on much needed water resources in

Today, environmental considerations remain an important aspect of bidding for and hosting the Games. Legacies of host cities such as Sydney and Beijing, actions stemming from the environmental amendment to the Olympic Charter, and specific environmental considerations within the *Manual for Candidate Cities*⁹⁹ all influenced the most recent, 2016 bids.

The Chicago 2016 bid was committed to hosting the greenest Games possible and moving all spectators within the Olympic transport system.¹⁰⁰ And in a Subcommittee hearing on Highways and Transit, Congressman Daniel Lipinski of Illinois touted Chicago's environmental reputation to bolster the bid to host the Olympic Games.¹⁰¹ The Chicagoland Bicycle Federation followed suit, pledging to work with the city to develop an improved cycling infrastructure for 2016.¹⁰²

But environmental goals remain just one factor among many on which members of the IOC base their decision when selecting a host for the Olympic Games. Such other factors can easily outweigh consideration for the environment, as evidenced

Beijing.”); *See also* UNEP, *supra*, at 99 (discussing the algae bloom problem during the Games).

⁹⁹ International Olympic Committee, *supra*, at theme 4: Environmental Protection and Meteorology (“the IOC includes environmental considerations and obligatory ecological studies in the process of evaluating cities applying to host the Olympic Games. The main responsibility for the environment, however, rests with the Candidate and Host Cities, as a function of governance and legislation.”).

¹⁰⁰ *Chicagoland Transportation Needs for the 2016 Olympics: Field Hearing Before the Subcommittee on Highways and Transit of the H. Comm. on Transportation and Infrastructure*, 110th Cong. 110-85 at 8-9 (2007) (Testimony of Doug Arnot).

¹⁰¹ *Id.* at 4 (Statement of Rep. Lipinski).

¹⁰² *Id.* at 109 (Submission of Chicagoland Bicycle Federation).

by the rejection of Tokyo's plan for the 2016 Games, widely seen as the most environmentally ambitious design of the year.¹⁰³

In light of the stated goal of the OM to improve the environment through sport, coupled with the evidence that host cities continue to underachieve in the realm of ensuring ecological welfare, it follows that the IOC has an interest in implementing binding environmental standards in order to influence host cities to reach their potential.

IV. Sources of IOC Authority to Impose Environmental Standards for the Olympic Games

Having established an IOC interest in setting environmental standards for the implementation of the Olympic Games, this article turns to the power of the IOC to do so. In light of valid contract, international treaty, and customary international law theories of enforceability, IOC environmental regulations would have the force of binding law.

A. Contract Theory

The most straightforward way for the IOC to bind host cities to specific environmental standards is through a written contract that indicates exactly what the standards are. For every Olympic Games, before a city becomes the official host, the IOC, the host city municipal government, and the NOC execute a three-party contract, detailing a wide variety of responsibilities for the Olympic Games.¹⁰⁴ Spelling out precise environmental

¹⁰³ See Phillip Hersh & Ted Gregory, *Tokyo Proposes Compact, 'Green' Olympics*, Chicago Breaking News Center, (Jan. 31, 2010), <http://www.chicagobreakingnews.com/2009/02/tokyo-makes-cheaper-greener-olympic-games-bid.html>; *Tokyo Promotes Eco-Friendly Games*, Game Bids (Nov. 20, 2008) <http://www.gamesbids.com/eng/index.php?news=1202402953>.

¹⁰⁴ This Comment uses the Vancouver 2010 Host City Contract as the example for such contract.

requirements in an added section to this contract would bind the host city.

i. Role of National Organizing Committees

Before discussing the form this new section might take, it is useful to review the structure of NOCs and their role in putting together an Olympic Games. Because the host city contract involves three parties, the contract binds the city itself as a contract party, and the host country as represented by the NOC. The United States Olympic Committee (USOC) provides an example of an NOC representing its country.

The Amateur Sports Act of 1978 established the USOC as a federally chartered corporation.¹⁰⁵ The statute provides the USOC with the power to represent the United States for all relations related to the Olympics¹⁰⁶ and provided the USOC with “exclusive jurisdiction . . . [over] all matters pertaining to the United States participation in the Olympic Games . . . and the organization of the Olympic Games, the Paralympic Games, and the Pan-American Games when held in the United States.”¹⁰⁷ This was truly a broad delegation of power within the Olympic universe.¹⁰⁸

While the IOC entrusts the organization of the Olympics to the NOC of the host country,¹⁰⁹ after the IOC selects the host city, the NOC must establish an OCOG, which reports to the IOC Executive Board directly.¹¹⁰ The OCOG must conduct all its

¹⁰⁵ Amateur Sports Act of 1978, 36 U.S.C. §§ 220501 – 220529.

¹⁰⁶ *Id.* § 220505(2) & (3) (The USOC may “represent the United States as its national Olympic committee in relations with the International Olympic Committee . . . [and] organize, finance, and control the representation of the United States in the competition and events of the Olympic Games.”).

¹⁰⁷ *Id.* at § 220503(3)(A) & (B).

¹⁰⁸ See *infra* section IV(C)(1): *The Olympic Movement in United States Jurisprudence*, for a more detailed discussion.

¹⁰⁹ Olympic Charter (July 7, 2007) at 75-76.

¹¹⁰ *Id.*

activities in accordance with the Olympic Charter and any agreements made with the IOC, the NOC or the host city.¹¹¹ The OCOG has the status of a legal person within its country and can enter into contracts.¹¹²

For the preparation of a bid to host the Games, the IOC provides NOCs with a *Manual for Candidate Cities (Manual)*, outlining some specifications for the Games. Using the *Manual* from the 2010 Olympics as an example, Part II of the *Manual* details the requirements of the “Candidature File,” the foundation on which a bid is built.¹¹³ Part II is then divided up into different “Themes,” providing topics about which the *Manual* supplies information and questions, seeking candidate responses. While the *Manual* itself is not a contract, the Candidature File is,¹¹⁴ and the *Manual* provides information about the Candidature File.

Theme 2 of the *Manual* provides a description of the “Legal Aspects,” informing candidate cities that they must conform with the rules of the OM from the very beginning of their candidature.¹¹⁵ The *Manual* unequivocally states that all commitments or representations made in a Candidate City’s bid documents are binding.¹¹⁶ In fact, the process requires a written commitment from the government of the host country that it will “take all the necessary measures in order that the city fulfils its obligations completely.”¹¹⁷

¹¹¹ *Id.* at bye-law 3.

¹¹² *Id.* at bye-law 1.; 36 U.S.C § 250505 (b)(3) (The Amateur Sports Act also explicitly states that the USOC can enter into contracts.).

¹¹³ International Olympic Committee, *supra*, at part II.

¹¹⁴ *Id.* at Part II: Candidature File (“It is very important to remember that the replies given by the Candidate Cities in their file represent a commitment by the Candidature Committee in the event that the city in question is elected to host the Olympic Games”).

¹¹⁵ *Id.* at theme 2 (emphasis removed).

¹¹⁶ *Id.* at theme 2(d).

¹¹⁷ *Id.* at theme 2.1.1.

Comparing each bidding city's Candidature File, the IOC then selects one host city for the next Olympics.¹¹⁸ Shortly after the IOC announces the winning bid, the IOC, the winning city and the winning NOC sign the host city contract.¹¹⁹

ii. Host City Contract

There are two ways the host city contract can impose IOC-specified, binding environmental requirements on the host city: through specific environmental language in the contract, or through an agreement that the IOC will determine the specific standards at a later date.

First, as with any enforceable contract, the parties involved can jointly agree to include any condition into the specifications of the contract. In this way, the IOC could easily include certain environmental standards into the language of the host city contract itself, and if the host city agrees to be bound by those provisions, they become binding as a matter of contract law. This is certainly the simplest way to impose environmental standards.

The contract would additionally specify the governing law, the court for arbitration of disputes, and provide means of enforcement with liquidated damage clauses. Currently, host city contracts routinely contain choice of law and arbitration clauses, selecting the Court of Arbitration of Sport to resolve all contract related disputes with Swiss law.¹²⁰ If host city contracts impose

¹¹⁸ *Id.* at part 1 (Stages of Candidature).

¹¹⁹ *Id.*

¹²⁰ City of Vancouver, Canadian Olympic Committee, Host City Contract for the XXI Olympic Winter Games In the Year 2010, (June 18, 2003) at § XI(68) (“This Contract is governed by Swiss law. Any dispute concerning its validity, interpretation or performance shall be determined conclusively by arbitration, to the exclusion of the ordinary courts of Switzerland or of the Host Country, and be decided by the Court of Arbitration for Sport in accordance with the Code of Sports-Related Arbitration of the said Court . . . If, for any reason, the Court of

specific environmental standards for the Olympics, the Court of Arbitration of Sport would be perfectly capable of finding host city violations when they occur and determine the appropriate remedy.

Liquidated Damage Clauses make the court's remedy analysis nearly effortless because the remedy is predetermined. For example, if the host city contract requires that all newly constructed residential buildings for the Olympic Games produce at least 40 percent of its energy consumption on site, with clean renewable sources,¹²¹ the contract would also include a clause specifying money damages, payable to the IOC,¹²² if the host country fails to meet that commitment.¹²³

Similarly, the contract could also specify non-monetary penalties that would be enforced if the host city violates the environmental standards. For example, the contract might specify that if a host city violates a standard, the host city's parent nation would be barred from participating in the subsequent Games. It is important to note that whenever a contract stipulates damages or penalties, there is a risk that a court will find those penalties unreasonable and therefore unenforceable, but that is a risk the drafters would consider. Pursuant to the host city contract, Swiss law would govern the reasonability issue and the Court of Arbitration of Sport would rule on its enforceability. The drafters of the contract would be on notice as to the choice of law, and would structure the damage clauses accordingly.

On the other hand, specifying every single environmental standard and the remedies for violating them in the host city

Arbitration for Sport denies its competence the dispute shall then be determined conclusively by the ordinary courts in Lausanne, Switzerland.”).

¹²¹ Presumably, “on site,” “clean,” and “renewable” would be defined elsewhere in the contract.

¹²² The contract could similarly direct the money to some third party, such as a preservation foundation or other environmentally focused fund.

¹²³ The clause could even include incrementally increasing damages, for the more egregious the violations become.

contract itself would add a significant amount of text to an already complex contract that covers a number of sensitive areas; nonetheless, it may provide the simplest way for the IOC to impose environmental requirements. Yet, if the parties decide that it would be better to conclude the initial contract before figuring out all the nitty-gritty environmental details, the contract could allow the IOC to enact the environmental requirements at a subsequent time, still binding the host city.

The contract could provide for this later determination in two ways. The contract could explicitly state that the parties agree that the host city will be bound by the environmental requirements set by the IOC at a later date, or such agreement could be implied through repeated language within the contract that recognizes the IOC as the supreme authority over the Olympics and the NOC's subordinate status, as indicated by the Olympic Charter.¹²⁴ Again, the enforceability of such subsequent requirements would be determined by Swiss law, and the IOC must therefore consider Swiss law when drafting the environmental standards.

Finally, one last resort method for the IOC to use the contract as a way to impose its environmental standards involves a persistent rejection of the NOC's plan for the Games until it satisfies the IOC's vision for environmentally responsible Games. As specified in the host city contract for the 2010 Winter Games, any NOC plan must receive IOC approval.¹²⁵ The IOC's ability to reject any organizational plan that lacks sufficient environmental standards, therefore, is contractually based.

¹²⁴ Host City Contract for the XXI Olympic Winter Games, *supra*, at preamble (“Whereas the Olympic Charter . . . governs the organization and operation of the Olympic Movement and stipulates the conditions for the celebration of the Olympic Games.”).

¹²⁵ *Id.* at § II(14) (“[T]he OCOG [Organizing Committee for the Olympic Games] shall submit a general organization plan and the master plan of the OCOG and of the Games to the IOC Executive Board for its prior written approval. All changes to such general organizational plan and/or master plan shall be subject to the prior written approval of the IOC Executive Board.”).

For these reasons, the IOC can use the host city to impose environmental standards for the Olympics. Alternatively, viewing the Olympic Charter as an international treaty to which members of the OM are bound reveals another source of IOC power to impose environmental standards.

B. Treaty Law Theory

A second theory for IOC to impose binding environmental standards for the Olympics relies on the Olympic Charter, as an international treaty, which recognizes the IOC's ability to require the Games be conducted in an environmentally sound manner. While this theory requires more creativity than the contract theory, the argument is plausible.

The Ninth Circuit Court of Appeals has recognized the Olympic Charter as an international agreement, which bolsters the IOC's power.¹²⁶ In 1984 the Ninth Circuit heard a case involving the authority of the IOC to exclude female running events offered for men at the 1984 Los Angeles Games. In dicta, the court stated:

[W]e find persuasive the argument that a court should be wary of applying a state statute to alter the content of the Olympic Games. *The Olympic Games are organized and conducted under the terms of an international agreement—the Olympic Charter.* We are extremely hesitant to undertake the application of one state's statute to alter an event that is staged with competitors from the entire world under the terms of that agreement.¹²⁷

¹²⁶ *Martin v. International Olympic Committee*, 740 F.2d 670, 677 (9th Cir. 1984).

¹²⁷ Even though there was no conflict between domestic law and the Olympic Charter in *Martin*, because the court found no violation of California statutes, and therefore does not definitively show that the United States would concede authority to the IOC if they were in conflict, that question is more about enforcement, discussed below, than about legal authority. The fact remains that

Helpful in analyzing the treaty theory is an understanding of the IOC and the OM's role in the international community and under international law. Even after the 1984 case, some may be skeptical of the power of an international non-governmental organization, such as the IOC, to impose binding standards on sovereign states. But Professor Janis has suggested an evolving conception of international law "[i]n light of the decline of the degree of sovereignty of the state and the rise of alternative structures competing to regulate international activity . . . non-state actors now help to shape the global legal system."¹²⁸ The IOC fits nicely into this new conception, as it is a non-state actor that seeks to regulate international activity in the context of the Olympic Games.

International treaty law, too, is moving to incorporate non-state actors. Currently, the 1969 Vienna Convention on the Law of Treaties governs international treaty law.¹²⁹ The 1969 Vienna Convention recognizes "the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations, whatever their constitutional and social systems."¹³⁰ While the 1969 Convention limits this recognition to "nations" and further defines "treaty" as "an international agreement concluded between States. . . ,"¹³¹ it also clarified that its omission of non-state actors does not affect the

the Ninth Circuit made a powerful statement about its hesitancy to interfere with how the IOC conducts the Olympic Games. *See, e.g., Martin v. International Olympic Committee*, 740 F.2d 670, 677 (9th Cir. 1984) (emphasis added) (holding that there was no violation of state law, the US Organizing Committee need not include a 5,000 and 10,000 meter race for women).

¹²⁸ Mark Janis, *International Law?*, 32 HARV. INT'L. L.J. 363, 371 (1991).

¹²⁹ Vienna Convention on the Law of Treaties (May 23, 1969.).

¹³⁰ *Id.* at Preamble.

¹³¹ *Id.* at art. 2 §1(a).

legal force of agreements made by such non-state subjects of international law.¹³²

However, due to a recognized importance of treaties between States and international organizations, or among multiple organizations as useful for providing peaceful cooperation,¹³³ the international community attempted to incorporate non-governmental organizations into the 1969 Convention with the 1986 Vienna Convention.¹³⁴ Although the 1986 convention is not yet in force, it is useful in guiding the discourse.

The 1986 Convention defines “treaty” to include “international agreement[s] governed by international law and concluded in written form: (i) between one or more States and one or more international organizations; or (ii) between international organizations”¹³⁵ and does so “[n]oting that international organizations possess the capacity to conclude treaties, which is necessary for the exercise of their functions and the fulfillment of their purposes.”¹³⁶ The 1986 convention also clarifies that its language does not interfere with the internal rules of the organization, such as the OM’s Charter or bylaws.¹³⁷

¹³² *Id.* at art. 3 (“The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect: (a) the legal force of such agreements; (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention.”).

¹³³ Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (Mar. 21, 1986) at preamble, UN Doc. A/CONF.129/15.

¹³⁴ *Id.*

¹³⁵ *Id.* at art. 2 §1(a).

¹³⁶ *Id.* at preamble.

¹³⁷ *Id.*

The 1986 document specifies that consent to be bound by a treaty can include approval by accession.¹³⁸ Assent can be as basic as the parties decide.¹³⁹ Therefore, the emerging conception of treaties gives wide latitude to the language of the agreement itself to determine what is necessary for parties to certify their agreement to be bound.

The Olympic Charter, the document that “governs the organisation, action and operation of the Olympic Movement and sets forth the conditions for the celebration of the Olympic Games,”¹⁴⁰ states, “[u]nder the supreme authority of the International Olympic Committee, the Olympic Movement encompasses organisations, athletes and other persons *who agree to be guided by the Olympic Charter*.”¹⁴¹ The Charter continues, “[b]elonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.”¹⁴²

It is important to note that the Charter does not list nations, states or countries as part of the Movement. Rather, NOCs represent their respective countries within the OM. As mentioned,¹⁴³ for example, the Amateur Sports Act established the USOC through Congressional designation and provided the USOC with the power to “represent the United States as its national Olympic committee in relations with the International Olympic Committee . . . [and] organize, finance, and control the representation of the United States in the competition and events of the Olympic Games.”¹⁴⁴ The act also provided the USOC with “exclusive jurisdiction . . . [over] all matters pertaining to the United States participation in the Olympic Games . . . and the

¹³⁸ *Id.* at art. 15.

¹³⁹ *Id.*

¹⁴⁰ Olympic Charter, *supra*, at introduction.

¹⁴¹ *Id.* at art. 1 para. 1.

¹⁴² *Id.* at Fundamental Principles of Olympism, principle 6.

¹⁴³ See *Olympic Charter, supra*, at section IV(A)(1).

¹⁴⁴ 36 U.S.C § 220505(c)(2), (3).

organization of the Olympic Games, the Paralympic Games, and the Pan-American Games when held in the United States.”¹⁴⁵

There are specific procedures outlined in the bye-laws to Rules 28 and 29 of the Olympic Charter for IOC recognition of NOCs and acceptance into the OM.¹⁴⁶ It is reasonable to interpret such recognition as a bilateral agreement, creating a binding treaty according to the 1986 Vienna Convention, with the NOC seeking recognition and acceptance into the OM and the IOC recognizing the NOC as a member of the OM. But the 1986 Convention is not yet in force.

The 1986 Vienna Convention on the Laws of Treaties requires the ratification or accession of thirty-five *states* before it can enter into force.¹⁴⁷ As of writing, there are forty-one parties to the convention, with twenty-one additional non-party signatories.¹⁴⁸ But those numbers include some international organizations, which, as non-state actors, are not counted toward the threshold number required for enforcement.¹⁴⁹ Furthermore, once the treaty enters into force, it will not bind non-parties such as the United States. But, the 1986 Convention still illustrates the emerging conception of what treaties and international law encompass. It is therefore valuable in tracing the outer boundaries of international law.

One potential problem remains: most, if not all NOCs joined the OM and agreed to be guided by the Olympic Charter before the IOC enacted the 1996 environmental sustainability

¹⁴⁵ *Id.* § 220503(3)(A) & (B).

¹⁴⁶ *See* Olympic Charter art. 28 & 29, bye-law 1.

¹⁴⁷ Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations art. 85.

¹⁴⁸ United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&lang=en#1 (last visited Nov. 20, 2009)(The United States is a signatory but has not ratified the Convention yet.).

¹⁴⁹ *Id.*

amendment.¹⁵⁰ However this is not a problem because NOCs continually reaffirm their commitment to the Charter. For example, even though the USOC agreed to the principles of the Charter before it mentioned anything about the environment (in 1978), by sending American athletes to Nagano,¹⁵¹ Sydney¹⁵² and so on, the USOC agreed to the newest incarnation of the Charter (including the environmental amendment). After all, membership in the OM, which demands acceptance of the Charter and the power of the IOC, is a pre-requisite for participation in the Games.¹⁵³

There are other examples of international organizations creating binding international law. Indeed, the United Nations is an international organization, with international law-making powers.¹⁵⁴ But since the world views the UN as a quasi-world government, it may be more useful to look elsewhere for an example of an analogous international organization that has historically created binding international law pursuant to a treaty.

One of the best examples is the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is a non-profit corporation that develops policy on the Internet's unique identifiers.¹⁵⁵ Recently, ICANN expanded the possible characters used to identify an internet domain to include international characters such as Chinese and Arabic and allow for suffixes

¹⁵⁰ See International Olympic Committee, Manual on Sport and Environment, chapter III §. 3.1 (2005).

¹⁵¹ Nagano 1998 Winter Games.

¹⁵² Sydney 2000 Summer Games.

¹⁵³ See Olympic Charter art. 1, para. 2; art. 6, para. 1 (specifying that NOCs are members of the OM and NOCs select athletes for participation in the Olympic Games).

¹⁵⁴ U.N. Charter, Preamble ("Accordingly, our respective Governments . . . do hereby establish an international organization to be known as the United Nations.").

¹⁵⁵ Internet Corporation for Assigned Names and Numbers, <http://www.icann.org/en/about/> (last visited Nov. 20, 2009).

beyond .com or .org, etc.¹⁵⁶ But what makes the decisions of ICANN binding on the nations of the world?¹⁵⁷ Why didn't China unilaterally create domains using Chinese characters before ICANN allowed it to?¹⁵⁸ One explanation is that like most international law, and like the Olympic Charter, ICANN is supported by the nations' expressed agreement with its principles.¹⁵⁹ However, it is also possible that a threshold number of nations have consistently and frequently accepted the authority

¹⁵⁶ See Kelly Olson, *Internet Set to Add Web Addresses in Non-English Characters*, The Huffington Post, Oct. 26, 2009, http://www.huffingtonpost.com/2009/10/26/international-domain-name_n_333449.html (last visited Nov. 20, 2009).

¹⁵⁷ See Przemyslaw Paul Polanski, *Customary law of the Internet: In the Search for a Supranational Cyberspace Law* 350 (2007) (quoting Karavas, V. i Teubner, G., <http://www.CompanyNameSucks.com> : The Horizontal Effects of Fundamental Rights on 'Private Parties' within Autonomous Internet Law, 1354-1355 (2003) ("The practices of still adolescent ICANN Panels, the precedent system and the nature of the norms applied, taken together with their stronger degree of political legitimation and, above all, the mode in which their decisions are effectively enforced, furnish the *lex digitalis* with a far stronger degree of legal quality than that provided by the practices of a by now old and treasured *lex mercatoria*, whose recognition as an autonomous [legal order] by national courts and international legal doctrine, although not complete, is, [at] the very least, far more developed.").

¹⁵⁸ In 2006, there were rumors that China planned to unilaterally bypass ICANN and create a new root server to create Chinese character domains, but both the Chinese government and ICANN denied such reports. See, e.g., Anne Broache, *ICANN: Reports on China's Net Scheme Untrue*, CNET, http://news.cnet.com/8301-10784_3-6045396-7.html (last visited Jan. 5, 2010).

¹⁵⁹ ICANN Governmental Advisory Committee Operating Principles, Principle 15 (Amended Mar. 2010) (a component of ICANN is the Government Advisory Committee, membership to which is open to all national governments); See *GAC Representatives*, ICANN, <http://gac.icann.org/gac-representatives> (last visited Jan. 31, 2010) (the GAC has over 100 government members, including China); Communique of the Governmental Advisory Committee, Mar. 2, 1999 (Singapore), para. ¶ 1, http://gac.icann.org/system/files/GAC_01_Singapore_Communique.pdf (At GAC's inaugural meeting on March 2, 1999, the attending committee members, including China, stated, "The national governments endorse the principles behind the creation of ICANN.").

of ICANN out of a feeling of legal obligation, creating customary Internet law.

C. Customary Law Theory

International conventions and agreements are not the only source of international law. As the Statute of the International Court of Justice specifies, the International Court of Justice (ICJ) will apply, *inter alia*, both international conventions and international custom for determination of rules of law.¹⁶⁰

The customary international law theory for IOC authority to impose environmental standards on host cities is the most controversial of the three presented, but analyzing the viability of the theory demonstrates a theoretical perspective and modestly bolsters the IOC's power.

Typically, the international community applies "international custom" in order to bind non-parties to a treaty or agreement to conduct specified by that treaty.¹⁶¹ After all, if an international actor officially consented to an agreement, there is no need to delve into the customary legal implications of state practice, since the legal obligations are expressed.

Likewise, it may be unnecessary to discuss the customary law implications of state practice vis-à-vis the OM, since NOC membership in the OM and adherence to the Olympic Charter is a prerequisite for an Olympic Games candidate city, and the host city contract specifies that the Olympic Charter "governs the organization and operation of the Olympic Movement and stipulates the conditions for the celebration of the Olympic Games."¹⁶² However, the customary international legal implications of participation in the Olympic Movement is an

¹⁶⁰ Statute of the International Court of Justice, art. 38.

¹⁶¹ MARTIN DIXON, TEXTBOOK ON INTERNATIONAL LAW 37-38 (6th ed., 2007).

¹⁶² Vancouver 2010 Host City Contract, Preambles (A).

interesting question and can strengthen the claim that obligatory environmental requirements would be binding on the host city.

The elements needed to establish customary international law include: 1) state practice that is consistent, general in scope, and repetitious,¹⁶³ and 2) that such practice is motivated by a sense of obligation (*opinio juris*).¹⁶⁴ Applying these elements, one can conclude that there is customary acceptance of the IOC's supreme authority over the Olympics.

First, states have consistently and repeatedly acceded to the authority of the IOC in implementing the Olympic Games however it sees fit throughout the modern history of the Olympics. Such accessions range from the rules of individual sports to acceding to certain requirements for constructing the Olympic Village.¹⁶⁵ In addition, there exists a well-documented history of national and local governments acceding to the "law of sport," during sports competition, where such rules normally conflict with local law.

Reflecting on unique, defined areas where the "law of sport" is supreme over criminal or tort liability, IOC Juridical Commission member Bâtonnier René Bondoux highlighted a French Court¹⁶⁶ decision where the court decided that racers taking part in a cycling road race were free from the typical rules of the road for the duration of the race.¹⁶⁷ Bondoux argued that the French judgment reveals a completely independent set of rules during sport competition from the nation's laws.¹⁶⁸ As he wrote,

¹⁶³ DIXON, *supra*, at 31-34.

¹⁶⁴ *Id.* at 34.

¹⁶⁵ See Olympic Charter art. 39 ("the OCOG shall provide an Olympic Village for a period determined by the IOC Executive Board."); Olympic Charter art. 39 bylaw 1 ("The Olympic Village shall meet all requirements as established by the IOC Executive Board").

¹⁶⁶ French name: Cour de Cassation, Chambre criminelle.

¹⁶⁷ Bâtonnier René Bondoux, *Law and Sport*, OLYMPIC REVIEW NO. 123 at 498 (1978).

¹⁶⁸ *Id.*

“[R]egulations laid down by this federation shall, for the time of this competition and for the competitors, become the true rule of the road!”¹⁶⁹ In certain contexts, the law of sport is a distinct legal system.

Further, arguing in support of an independent and binding international sport legal system, a comment in the *Dickinson Journal of International Law*, identified the rules and regulations of the IOC as one source governing this legal system.¹⁷⁰ While one can distinguish the rules of a game from administrative requirements for a sporting event, the identification of binding international sports law in general can provide the framework for imposing binding environmental standards that supersede local requirements.¹⁷¹

¹⁶⁹ *Id.*

¹⁷⁰ Barbara O’Neil, Comment, *Have States Succeeded Athletes as Players?*, 6 DICK. J. INT’L L. 423 (1988).

¹⁷¹ The boxing context presents another example of sports law superseding domestic law. *See, e.g.*, Luc Silance, *Interaction of sports law and laws and treaties by public authorities*, OLYMPIC REVIEW NO. 111 at 621-22 (1977) (mentioning the favor afforded to sport law over domestic penal law); Boxers exchange voluntary blows, yet virtually no jurisdiction provides consent as a valid defense for assault. Yet there are no examples of Olympic boxers being charged with assault by a host country for blows inflicted during competition, despite domestic laws allowing such prosecution. Research failed to uncover any incidence of a boxer being prosecuted for participating in the sport. *See, e.g.*, New York Penal Code art. 120 §120.00 (“A person is guilty of assault in the third degree when: 1) With intent to cause physical injury to another person, he causes such injury to such person . . .”); It is necessary to mention that in 1912, the IOC acceded to Stockholm’s refusal to allow boxing at the Olympic Games, due to a national ban on the sport, but the IOC adapted in order to have more power in subsequent games. *See* British Olympic Association, *Stockholm 1912: About*, <http://www.olympics.org/gamesabout.aspx?gt=s&ga=6> (last visited Nov. 20, 2009) (“the decision to omit boxing prompted the International Olympic Committee to wield a greater influence in event selection for subsequent Games.”); The 1921 IOC Congress made structural changes to the IOC in administering sports and as the Olympic Games grew in grandeur, the IOC

Second, the structure of the OM—with a “constitutional” document, procedures, and authoritative rules— provides an aura of law and leads states to accede authority to the IOC out of a feeling of legal obligation.¹⁷² Such a structure supports an assertion of *opinio juris*, necessary for binding customary law.

Professor James Nafziger, author of *International Sports Law* and a leading authority on the topic, recognizes an acceptance of international sports law with the Olympic Charter as its foundation:

The process of international sports law thus includes provisions of international agreements; international custom, as evidence of a general practice accepted as law; general principles (including equity and general principles articulated in the resolutions of international organizations); and, as subsidiary sources, judicial decisions (including those of both international and national tribunals) and scholarly writings . . . The Olympic Charter thereby forms the normative foundation of international sports law. Although the acceptance of its authority is not universal,

increased its influence and the President became more assertive in his demands. *See, e.g.*, Mark Dyreson, *Paris 1924*, in *ENCYCLOPEDIA OF THE MODERN OLYMPIC MOVEMENT* 80 (John Findling & Kimberly Pelle, eds., 2004); Leading up to the 1936 Berlin Games, the IOC President threatened to withdraw the Games from Berlin if the Germans could not guarantee adherence to the Olympic rules. *See, e.g.*, Annette Hofmann & Michael Kruger, *Berlin 1936*, *ENCYCLOPEDIA OF THE MODERN OLYMPIC MOVEMENT* 108 (John Findling & Kimberly Pelle, eds., 2004).

¹⁷² Luc Silance, *Interaction of sports law and laws and treaties by public authorities*, *OLYMPIC REVIEW* NO. 111 at 622 (“The rule is laid down therefore by the voluntary sports movement, within an International Sports Federation or International Olympic Committee. These international sports organizations are modeled on the pattern of federal States, since they govern national sports federations and obey rules contained in “Statutes” . . . the International Olympic Committee and the International Sports Federations are comparable to inter-State international organisations. Their written rules (statutes or regulations) comprise legal provisions.”) (internal citations omitted).

and violations of its rules are all too common, the fundamental principles and operational rules of the Olympic Charter satisfy the requirements of *international custom* – repetition, duration and universality of practice, together with an adherence to the rules as legal authority (*opinio juris*).¹⁷³

A judge from the ICJ has even commented on the weight of the law of the OM, noting “the *sui generis* law of the Olympic Movement [is] accepted, respected and applied as a State-independent body of legal rules in a growing number of municipal court decisions.”¹⁷⁴

Further support for *opinio juris* with regard to IOC specifications for the Olympic Games rests in other related multi-state declarations. The Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords) of 1975 specifically addressed the realm of “sport” in its published document. The participating states expressed their intention to implement expanded cooperation through sports “on the basis of established international rules, regulations and practice.”¹⁷⁵ All European states (except Albania and Andorra), the USSR, Canada, and USA, which include all but one host of the Olympic Games up to 2008, signed the Helsinki Accords.¹⁷⁶

A plain reading of this statement refers to the rule of each sport, such as dribbling a ball when moving in basketball or not

¹⁷³ JAMES NAFZIGER, INTERNATIONAL SPORTS LAW 1-2 (2d ed., 2004) (internal citation omitted) (emphasis added).

¹⁷⁴ *Id.* at 4 (citing Simma, *The Court of Arbitration for Sport*, VOLKERRECHT/RECHT DER INTERNAIONALEN ORGANISATIONEN/WELF-WIRTSCHAFTSRECHT: RESTSCHRIFT FUR IGNAZ SEIDL HOHENVERDERN 537, 580 (K.-H Böckstiegel, H.-E. Folz, J.M. Mössmer & K. Zemanek eds., 1988)).

¹⁷⁵ Conference on Security and Co-operation in Europe Final Act, Helsinki (1975), *Cooperation in Humanitarian and Other Fields*, art. 1(g), <http://www.hri.org/docs/Helsinki75.html> (last visited Nov. 20, 2009).

¹⁷⁶ *See Id.*

using one's hands in soccer, but it also recognizes a legal authority higher than the world's nations in determining the rules for the execution of international sport competitions. Furthermore, the regulator in such situations is the IOC, as the supreme authority of the OM.

Indeed, Nafziger wrote, "the Olympic Movement performs three principal functions: It provides the framework for planning and supervising association and competitions among athletes, serves as a nucleus or catalyst for the development of international sports law, and provides a foundation for managing the legal process."¹⁷⁷

United States jurisprudence has provided support for the *opinio juris* element for IOC supremacy. In 1987, the Supreme Court of the United States heard IOC and USOC arguments against a California corporation for unauthorized use of the term "Olympics."¹⁷⁸ While the court held that the USOC was not a government actor to which the Fifth Amendment was applicable,¹⁷⁹ Justice Brennan, in his dissent, made powerful arguments for the importance of the USOC and its ability to conduct governmental functions. While reviewing Justice Brennan's argument, it is important to keep in mind that the USOC is a National Organizing Committee, and must therefore abide by the Olympic Charter.¹⁸⁰

¹⁷⁷ NAFZIGER, *supra*, at 3.

¹⁷⁸ *San Francisco Arts & Athletics v. United State Olympic Committee*, 483.US 522 (1987).

¹⁷⁹ *Id.* (The plaintiffs in the case claimed, *inter alia*, that the USOC's enforcement of its exclusive rights to the word "Olympics" was discriminatory in violation of the equal protection component of the Due Process Clause of the Fifth.).

¹⁸⁰ Olympic Charter art. 3, para. 2 ("All NOCs and associations of NOCs shall have, where possible, the status of legal persons. They must comply with the Olympic Charter. Their statutes are subject to the approval of the IOC.").

Justice Brennan wrote, “[e]xamination of the powers and functions bestowed by the Government upon the USOC makes clear that the USOC must be considered a Government actor Patently, Congress has endowed the USOC with traditional governmental powers that enable it to perform a governmental function.”¹⁸¹ Brennan continued,

The USOC performs a distinctive, traditional governmental function: it represents this Nation to the world community. The USOC is, by virtue of 36 U.S.C. §§ 374 and 375, our country’s exclusive representative to the [IOC], a highly visible and influential international body As the Olympic Games have grown in international visibility and importance, the USOC’s role as our national representative has taken on increasing significance.¹⁸²

Focusing on the majority decision in this Supreme Court case, David Ettinger, writing for the Pace 1992 Yearbook on International Law, concluded that: “if the Supreme Court is willing to protect the word ‘Olympic’ from unauthorized use, it is also willing to prohibit other violations of the Olympic Charter and any other IOC regulation governing the Olympic Games.”¹⁸³ While the Supreme Court will likely never hear a case involving violations of IOC Olympics regulations because of arbitration agreements in host city contracts, looking at federal court analysis goes a long way to demonstrate *opinio juris*.

In a non-environmental context, a United States district court deferred to the. In *De Frantz v. United States Olympic Committee*, several athletes brought suit against the USOC, seeking an injunction against a USOC resolution to boycott the

¹⁸¹ *San Francisco Arts & Athletics*, 483 US at 549 (1987).

¹⁸² *Id.* at 550.

¹⁸³ David Ettinger, *The Legal Status of the International Olympic Committee*, 4 PACE Y.B. INT’L L. 97, 107 (1992).

1980 Moscow Games.¹⁸⁴ The district court rejected the athletes' claims, resting a portion of their decision on the wide power and discretion of the USOC in the realm of the Olympic Games.¹⁸⁵ Not only did the court affirm the position that the USOC retains final authority to withhold United States participation in the Olympic Games, but it decided that the USOC could do so for non-sport related reasons.¹⁸⁶

Further, President Carter strongly pressured the USOC to boycott the 1980 Games, even threatening to take legal action if USOC voted to participate in the Games,¹⁸⁷ but the decision to boycott was not his to make. The President knew it was the USOC's decision. The fact that the President of the United States had to persuade the USOC to boycott the Games, even as the chief executive of the U.S. government¹⁸⁸ illustrates the strength of the OM and its ability to impose its own procedure over sovereign nations within the realm of the Olympic Games.

Further supporting the *opinio juris* argument, the *De Frantz* court remarkably applied IOC rules and the Olympic Charter as legally authoritative documents. In the court's words, "predecessors to the now federally-chartered USOC have existed since 1896, and since that time, they have exercised the authority granted by the [IOC] to represent the United States as its [NOC] in matters pertaining to participation in Olympic [G]ames."¹⁸⁹ Citing the codified structure of the OM, the *De Frantz* court further noted the exclusive authority of the NOCs to represent their respective

¹⁸⁴ 492 F. Supp. 1181 (D.D.C. 1980).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 1184 (Carter's threat included invoking sanctions under the International Emergency Economic Powers Act.. Since the president never carried out his threat, it is unclear if IEEPA is available for such actions.).

¹⁸⁸ The President has historically been endowed with wide latitude in the realm of international relations. *See, e.g., United States v. Curtis-Wright Export Corp.*, 299 U.S. 304, 318 - 319 (1936).

¹⁸⁹ *De Frantz*, 492 F. Supp. at 1187..

countries at the Olympic Games and that participation is voluntary.¹⁹⁰ Such exclusive representation supports the argument that NOCs bind their countries to the authority of the IOC and the Charter.¹⁹¹

Adding to the views of the American judiciary, an article in the Fordham International Law Journal claimed the executive branch of the United States government has consistently assured the IOC that it would adhere to IOC decisions when the Games are held in the United States.¹⁹² The article cites a Justice Department “Statement of Interest” opposing judicial intervention in *Liang Ren-Guey v. Lake Placid 1980 Olympic Games Inc.*, which stated a foreign policy interest in hosting events such as the Olympic Games consistent with decisions of the Olympic Movement.¹⁹³ The Justice Department also confirmed that for the 1980 Winter Games in Lake Placid, the United States had repeatedly committed to the conditions set by the IOC.¹⁹⁴ Such a statement coming from the executive branch is evidence of strong deference to the power of the IOC.

These judicial and executive views leave NOCs in a quite powerful position in the Olympic universe. In fact, the *De Frantz* court saw the USOC as independent from the government, with no right for the federal government to control it.¹⁹⁵ This shows the position of NOCs, as recognized by the United States judiciary, as a member of the OM, distinct from the national government, but

¹⁹⁰ *Id.*

¹⁹¹ Olympic Charter art. 3, para. 2 (NOCs “must comply with the Olympic Charter” to belong to the Olympic Movement); Olympic Charter art. 1, para. 1 (specifying that the IOC is the supreme authority of the Olympic Movement).

¹⁹² James Goetell, Note, *Is the International Olympic Committee Amenable to Suit in a United States Court?*, 7 FORDHAM INT’L L.J. 61, 71 (1984).

¹⁹³ *Id.* (citing Justice Department Statement of Interest in *Liang Ren-Guey v. Lake Placid 1980 Olympic Games Inc.*, 424 N.Y.S.2d 535).

¹⁹⁴ *Id.*

¹⁹⁵ *De Frantz*, 492 F. Supp. at 1194 (consistent with *San Francisco Arts & Athletics*, the court determined the USOC is not a state actor).

with superior authority to the government in the realm of the Olympic Games. It is therefore, perfectly reasonable to conclude that the IOC, through the NOCs, can impose specific environmental standards on a host city for the Olympic Games, with the force of law.

D. Enforcement

The issue of enforcement is the final obstacle to imposing binding international obligations. For IOC environmental standards to be binding, there must be a theory of a means of enforcement, otherwise the IOC would just be blowing hot air. However, this is only a theory because with much binding international law, there is no actual enforcement mechanism beyond international political pressure due to the limited use of United Nations Security Council Chapter VII enforcement powers.

The question as to how decisions of the Court of Arbitration of Sport can be enforced raises the difficult issue inherent in all international agreements involving sovereign nations: there is no international police force that can penalize a sovereign nation for violating binding international law and the likelihood of the Security Council taking serious action on a decision of the Court of Arbitration of Sport remains unlikely. But the fact that there is no analogous international enforcement regime in domestic law does not mean that binding international law is a fiction.

If the IOC seeks to avoid arbitration, the IOC can use its power and standing to induce compliance before resorting to the Court of Arbitration of Sport. At a 2001 conference on “Olympic Games and Architecture – The Future of Host Cities,” SEC member Simon Balderstone remarked how the Olympic Movement can “use its profile, its influence, its universality – let’s face it, its power – to influence, to promote, to force change, to *impose its*

pace.”¹⁹⁶ Nafziger agreed, confirming that in order for the IOC to enforce its own rules, it must constantly twist the arms of those resisting.¹⁹⁷ In his own words: “[a]t the summit of the sports world sits the IOC. But, unlike Zeus of old, the IOC has few thunderbolts to command obedience.”¹⁹⁸

The largest thunderbolt at the IOC’s disposal is the right to withdraw the Olympic Games from the host city if it determines that the NOC or host city violated the Olympic Charter or the host city contract.¹⁹⁹ While revocation of the right to host the Games is a powerful tool for rule enforcement, the IOC must be very careful when to use it. At some point, as the Games approach, the host city would likely assume the IOC is bluffing due to the IOC’s own vested interest in the Games continuing and the inability to relocate such a massive event on short notice. In such circumstances, it may be more effective for the IOC to exclude the insubordinate host country’s athletes from participating²⁰⁰ in subsequent Olympic Games due to violations of their environmental obligations. Critics may point out that such exclusion may cause a backlash against the Games, but it is a tool available to the IOC.

In light of the enormous benefits, whether perceived or real, that the Olympics brings to a host city, used at an effective time and for the right reasons, the threat of revocation of the

¹⁹⁶ Balderstone, *supra*, at 2.

¹⁹⁷ NAFZIGER, *supra*, at 5 n.20 (2004)(quoting W. IRWIN JR., THE POLITICS OF INTERNATIONAL SPORT – GAMES OF POWER (1988)).

¹⁹⁸ *Id.*

¹⁹⁹ Olympic Charter art. 23 (“In the case of any violation of the Olympic Charter, the World Anti-Doping Code, or any other regulation, as the case may be, the measures or sanctions which may be taken by the Session, the IOC Executive Board or the disciplinary commission referred to under 2.4 below are: (1) In the context of the Olympic Movement: (1.6) *With regards to a host city, an OCOG and an NOC: withdrawal of the right to organize the Olympic Games (Session).*”).

²⁰⁰ Meaning, the nation of the violating host city would not be able to send athletes to compete in any given number of subsequent Games.

Games can act as a powerful enforcement mechanism. Ticket revenue from the Games reaches roughly \$100 million,²⁰¹ and television networks pay almost one billion dollars for broadcasting rights.²⁰² While the host city does not receive the full benefit of those amounts,²⁰³ the host city still receives a substantial amount of money from these sources.²⁰⁴

Predicting the effects of the 2010 Winter Games on Vancouver's economy, a cost/benefit analysis for Queen's University claimed that 600,000 international visitors were expected to come to Vancouver for the Games, causing a 25% price increase in tourism-related sectors.²⁰⁵ This 25% price increase creates a windfall profit for local businesses directly because of the Olympic Games, fueling the local economy. On the other hand, there is sound evidence that suggests the Olympic Games do not create the kind of economic benefit that many people think.²⁰⁶ But in a discussion about the effectiveness of a threat to revoke the right to host the Games, it is the perceived benefit that matters, not the real benefit.

The competition for the 2016 Games further demonstrates the intense desire that countries have to host the Olympics. The

²⁰¹ NAFZIGER, *supra*, at 10.

²⁰² *Id.* (indicating NBC contracted to pay \$894 million to broadcast 2008 China Games).

²⁰³ McHugh, *supra*, at 35 ("According to the Bid Book, the IOC will collect an estimated \$800m US from the various [television] networks, and give half of that (\$400m USD) to the host city.").

²⁰⁴ NAFZIGER, *supra*, at 10.

²⁰⁵ *Id.*

²⁰⁶ See Ian Austen, A \$1 Billion Hangover From an Olympic Party, THE NEW YORK TIMES, Feb. 24, 2010, at A6 (Reporting that the initial security budget for the 2010 Vancouver Games of \$165 million will likely cost \$1 billion. But even with that overrun, organizers expect the budget to break even); McHugh, *supra*, at 58 (quoting Rob Baade) (In addition, economist Professor Rob Baade succinctly stated, "[e]conomic theory casts doubt on a substantial windfall for the host city from the Olympic Games. Cities competing with one another for the Games would theoretically bid until their expected return reached zero.).

premiere of every bidding country appeared in Copenhagen to lobby for the selection of his country to host the Games, including President Obama who took the time to travel to Europe in the midst of a heated debate of health care legislation and war strategy in Afghanistan.²⁰⁷ And after Rio de Janeiro won the IOC vote for the 2016 Games, “tens of thousands of Rio’s samba-loving residents poured onto Copacabana Beach, where they danced into the evening in flip-flops and green-and-yellow bikinis to celebrate their city’s selection as the site of the 2016 Olympics.”²⁰⁸ Such desire for selection gives the selector significant power over the candidates and that power can be channeled to enforce environmental standards.

Conclusion

As head of the Olympic Movement, the International Olympic Committee pulls a lot of weight in the world of international sport competition. With the growth of the Olympic Games and the adoption of environmental protection as an ideal of the Olympic Movement, the IOC has taken preliminary steps to ensure that the Olympic Games do not create negative environmental legacies. But to date, the IOC has avoided imposing specific environmental standards on the implementation of the Olympic Games, failing to utilize a powerful tool to realize its environmental mission. The IOC has the power to impose legally binding environmental requirements, and perhaps by using its power, the Olympic Games will be a slightly smaller burden on the planet.

²⁰⁷ See Peter Nicholas, *Obama was told his visit may nudge IOC to pick Chicago; Up until a few days before lying to Denmark, the president was not sold on the idea*, L.A. TIMES, Oct. 4, 2009.

²⁰⁸ Alexei Barrionuevo, *Olympic-size party lifts Brazil: Landing Summer Games is seen as a promise of even greater prosperity*, INTERNATIONAL HERALD TRIBUNE, Oct. 5, 2009.