

Lighting the Torch of Human Rights: the Olympic Games as a Vehicle for Human Rights Reform

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I. INTRODUCTION

¶1 The Olympic Games bring world records, emotional victories and memories of a lifetime. As the world gathers in Beijing, China for the 2008 Olympic Games, it is a moment in history to expand upon the athletic achievements, patriotism, world peace and collaboration that define the Olympic Movement. It is also an opportunity to utilize the Olympic bid, spirit and Movement as a tool for human rights reform. The international spotlight of hosting the Olympic Games and the authority of the International Olympic Committee (“IOC”) can effectuate political and social change. The Beijing Games are an opportunity to use the prestige of hosting the Olympic Games to inspire compliance and respect of international human rights law.

¶2 The IOC can be a driving force behind altering domestic policies of host countries and ensuring that they fulfill their commitment to international human rights. The United Nations Universal Declaration of Human Rights (“Declaration”)¹ is a “common standard of achievement for all peoples and all nations.”² It recognizes inherent dignity and inalienable rights as the foundation of freedom, justice and world peace.³ As a member of the United Nations, China is governed by and has frequently declared its adherence to the Declaration. Although Article 33 of the Constitution of the People’s Republic of China provides that “[t]he State respects and preserves human rights,”⁴ China’s policies have historically contradicted this statement. Can its role as host of the Olympic Games be the incentive China needs to bring about human rights reform? This Comment suggests that through China’s own self-interest in embracing the public relations opportunity and international spotlight of the Games, along with the authority and influence of the IOC, the Olympic bid, spirit and Movement can serve as a vehicle to better China’s human rights record.

¶3 Part II of this Comment provides the organizational structure of the Olympic Movement and an explanation of the historic link between politics and sports in the Olympic Games. Part III discusses the former uses of the Olympic Games as a tool for human rights reform. Specifically, the exclusion of South Africa from the Olympic Games during the Apartheid Era and the transformation of South Korea as a result of the

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¹ Adopted on December 10, 1948 by the General Assembly of the United Nations. UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948), <http://www.un.org/Overview/rights.html> (last visited Nov. 29, 2005).

² *Id.* at pmb1.

³ *Id.*

⁴ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA (1982), art. 33, <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Nov. 29, 2005).

1988 Seoul Olympic Games. Additionally, the antagonistic use of the Olympic Games during the 1980 Moscow Games is discussed. Part IV sets out the current situation in China, including its current status as host of the 2008 Olympic Games, specific human rights concerns related to the Beijing Games and the reform that has already been prompted by the Olympic Games. Discussion of reform that has already occurred in China includes analysis of the Sports Law of the People's Republic of China which was enacted in 1995 and shifted much of the control over sport in China to nongovernmental associations. Finally, Part V suggests using the Olympic bid to combat human rights violations in the future and emphasizes the valuable role the IOC plays in human rights reform through the Olympic Movement.

¶4 The Olympic spirit is a powerful tool to inspire change and the 2008 Olympic Games will be a rare opportunity to see how sports can affect international human rights. The honor, pride and global spotlight of hosting the Olympic Games has created an incentive for voluntary human rights reform that has been unmotivated by other methods, such as sanctions, negotiations or charters. Moreover, the IOC has the authority under the Olympic Charter to procure change. Rather than denying an Olympic bid or Olympic participation to force human rights reform, the Beijing Games provide a chance to transform a nation and set a precedent for utilizing the Olympic Games as a motivation for host countries to respect and improve human rights worldwide.⁵

II. THE STRUCTURE AND POLITICAL HISTORY OF THE OLYMPIC GAMES

A. *The Organizational Structure of the Olympic Movement*

¶5 The International Olympic Committee ("IOC"), an international, nongovernmental, non-profit organization, is the governing body of the Olympic Movement.⁶ The Olympic Movement encompasses any organizations, athletes or persons who agree to be guided by the Olympic Charter⁷ and to recognize the authority of the IOC in respect of that

⁵ In a 1995 Note, Paul Mastrocola also discussed the Olympic Games in relation to human rights reform. The difference between his note and this Comment is that his note suggests threatening countries with the denial of an Olympic bid and using the Olympic Games site selection as a *weapon* to force human rights reform (emphasis added). In contrast, this Comment views the Olympic bid, spirit and Movement as a powerful tool to inspire reform and as an opportunity for countries to improve their human rights record. Mastrocola justifies the U.S. opposition to China bid on the 2000 Olympic Games and suggests that the IOC deny Olympic bids as a weapon against a nation's abuse of human rights because abuses should preclude a nation from being an Olympic host. Paul Mastrocola, *The Lords of the Rings: The Role of Olympic Site Selection as a Weapon Against Human Rights Abuses: China's Bid for the 2000 Olympics*, 15 B.C. Third World L. J. 141 (1995).

⁶ International Olympic Committee, http://www.olympic.org/uk/organisation/ioc/organisation/index_uk.asp (last visited Nov. 29, 2005).

⁷ The Olympic Charter is a codification of the fundamental principles, rules and bylaws adopted by the IOC to govern the Olympic Movement. If there is any discrepancy between the French and English versions of the Olympic Charter, the French text prevails. The Olympic Charter, http://www.olympic.org/uk/organisation/missions/charter_uk.asp (last visited Nov. 29, 2005). The sixth Fundamental Principle of Olympism establishes the authority of the Olympic Charter:

6. Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.

The first, second and third Fundamental Principles of Olympism are addressed in this Part II.A. The fourth and fifth Principles are addressed in Part II.B. See *infra* Part II.A-B; Olympic Charter, Fundamental Principles of Olympism 9, http://multimedia.olympic.org/pdf/en_report_122.pdf (last visited Nov. 29, 2005).

commitment.⁸ The IOC was founded by French educator Baron Pierre de Coubertin on June 23, 1894 to revive the Olympic Games of Ancient Greece and to ensure the continued celebration of the Olympic Games.⁹ At a meeting in Paris in 1892, Coubertin first introduced the idea to revive the Olympic Games by stating: “Let us import our oarsmen, our runners, our fencers, into other lands. That is the true Free Trade of the future; and the day it is introduced into Europe the cause of Peace will have received a new and strong ally.”¹⁰ Coubertin envisioned the Olympic Games as an instrument for peace through international sports competition. At a meeting two years later, seventy-nine delegates representing nine countries voted unanimously to revive the Olympic Games and to have Coubertin construct the IOC.¹¹

¶16 The IOC is an international organization of unlimited duration headquartered in Lausanne, Switzerland.¹² The high visibility of the Olympic Games propels the IOC into a role as a nongovernmental organization with the influence to develop international reform. Since its inception, the IOC’s primary responsibility is to coordinate and supervise the Olympic Movement by developing international sport. Organizationally, the IOC consists of no more than 115 members who voluntarily act as “trustees” of the Olympic Movement, meeting once a year in Session.¹³ The IOC retains all rights related to the Olympic Games including: symbols, flags, mottos, anthems and marketing, broadcasting and reproduction of the Olympic Games.¹⁴ The general purpose of the IOC is to regulate domestic Olympic governing bodies to ensure compliance with the Olympic Charter and application of the Olympic rules, to determine qualification requirements for Olympic participation, to select sites for each Olympic Games and most importantly, to promote Olympic ideals.¹⁵

¶17 With the IOC at the top of its pyramidal structure, the Olympic Movement also includes International Federations (“IF”) which oversee specific sports, National Olympic Committees (“NOC”), the Organizing Committees of the Olympic Games (“OCOG”) and national and local governments.¹⁶ Besides matters the IOC must enforce under the Olympic Charter, the IOC can not enforce its authority on any of the autonomous organizations within the Olympic Movement; though it is an influential entity within the Olympic organizational structure.¹⁷ Listed in the Olympic Charter are the six

⁸ International Olympic Committee, *supra* note 6.

⁹ *Id.*

¹⁰ ALLEN GUTTMANN, *THE OLYMPICS: A HISTORY OF THE MODERN GAMES* 8 (1992).

¹¹ *Id.*

¹² JAMES A.R. NAFZIGER, *INTERNATIONAL SPORTS LAW* 4 (2004).

¹³ The annual Session is used to elect a President for a term of eight years, renewable once for four years, and Executive members for terms of four years. As a result of IOC members involved in the Bid Committee scandal of the 2002 Salt Lake City Winter Olympic Games, 1999 amendments include adding an IOC Ethics Commission, creating the World Anti-Doping Agency, publishing financial reports on the sources and use of the Olympic Movement income and opening IOC Sessions to the media. International Olympic Committee, *supra* note 6.

¹⁴ IOC funding relies mostly on the sale of broadcast rights and partnerships with worldwide corporations. *Id.*

¹⁵ Marcia B. Nelson, *Stuck Between Interlocking Rings: Efforts to Resolve the Conflicting Demands Placed on Olympic National Governing Bodies*, 26 VAND. J. TRANSNAT’L L. 895, 901 (1993).

¹⁶ Olympic Movement, http://www.olympic.org/uk/organization/movement/index_uk.asp (last visited Nov. 29, 2005).

¹⁷ *United States Senate Committee on Commerce, Science, and Transportation*, (Oct. 20, 1999) (written testimony of Richard W. Pound, Vice President, International Olympic Committee).

Fundamental Principles of Olympism.¹⁸ The first and second principles are particularly pertinent when dealing with the integration of Olympism ideals into human rights reform:

1. Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy of effort, the educational value of good example and respect for *universal fundamental ethical principles*.
2. The goal of Olympism is to place sport at the service of the harmonious development of man, with a view to promoting *a peaceful society* concerned with the *preservation of human dignity* (emphasis added).¹⁹

James A.R. Nafziger, a scholar on international sports law, briefly suggests that the principles and provisions of the Olympic Charter attempt to protect and promote human rights, but emphasizes that “there are no rights without a remedy.”²⁰ The IOC can provide that remedy since it is controlled by these fundamental principles and as such, can implement its authority under the language of the Olympic Charter to prompt compliance of international human rights law. The extent to which these ethical requirements may embody fundamental human rights raises a direct connection between hosting the Olympic Games and human rights. As a nongovernmental organization, the IOC can expand its jurisdictional power over amateur athletics and use its choice of an Olympic host country to flex its muscles against human rights violations. Furthermore, the public relations component of the Olympic Games host country under the world’s microscope enhances the potential for IOC authority under the Olympic Charter to persuade human rights reform.

B. Brief Political History of the Olympic Games

¶8 The father of the modern Olympic Games, Baron Pierre de Coubertin, imagined international sporting competition unaffected and free from the political landscape.²¹ The influence of politics upon the Olympic Games, however, can be traced to the first Ancient Olympic Games when much was made of the fact that the city-states of Ancient Athens, Greece had ceased war in favor of competitive sport.²² This seemed to be a political

¹⁸ All six Principles are addressed in Part II of this Comment. Olympic Charter, Fundamental Principles of Olympism, *supra* note 7.

¹⁹ The third Fundamental Principle of Olympism is:

3. The Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism. It covers the five continents. It reaches its peak with the bringing together of the world’s athletes at the great sports festival, the Olympic Games. Its symbol is five interlaced rings. *Id.*

²⁰ Several provisions of the Olympic Charter emphasize the promotion of women, the principles of equality, the prevention of endangering the health of athletes and the development of sport for all. Nafziger, *supra* note 12, at 121-122.

²¹ Coubertin believed that physical competition contributed to world society and promoted global harmony. His ideals depended on a commitment by states not to intervene in sports. *Id.* at 190, 195.

²² *Id.* at 180; Chowdhury, Abdul Quader. *Politics behind sports vis-à-vis Beijing Olympics 2008*. WORLD TIBET NETWORK NEWS. July 20, 2001, http://www.tibet.ca/en/wtnarchive/2001/7/20_1.html (last visited

tactic promoting the notion of sport as an alternative to war. The first Games were conceived to promote goodwill and unity among adversary city-states. The politicization of the Olympic Games has continued throughout the history of the modern Olympic Games. For instance, in the 1920 Antwerp Games, Austria, Bulgaria, Germany, Hungary and Turkey were barred from competition due to their involvement in World War I.²³ Prior to the Second World War, Hitler's attempt to use the 1936 Berlin Olympic Games as a Nazi political platform was spoiled by African-American athlete Jesse Owens' string of gold medals.²⁴ Furthermore, from the 1960 Rome Olympic Games until the 1992 Barcelona Olympic Games, South Africa was excluded from participation because of its apartheid laws.²⁵ More recently, in protest of the Soviet Union's 1979 invasion of Afghanistan, the United States and approximately fifty other nations boycotted the 1980 Moscow Games.²⁶ In retaliation, the Soviet Union led a boycott of the 1984 Los Angeles Olympic Games. Thus, it is evident that the link between politics and sports is visible through Olympic Games history, and the Games have often been used as a platform for effectuating political and social change.

¶9 Political intervention in sports has been described as a three level paradigm.²⁷ The first level involves mere governmental financial assistance, which is acceptable and often encouraged in international sports; the second level incorporates indirect or direct governmental administration of sport, which is usually controlled by national law and policy; and the third level of political intervention encompasses the exploitation of sports by government both in hosting the Games and through means such as boycotts, propaganda, refusal of visas and covert activities.²⁸ The IOC and other members of the Olympic Movement must be particularly aware of and regulate all activity that falls within level three political intervention, especially in relation to an Olympic Games host country. This may involve acknowledgment of the political role of the Olympics and identification of those fundamental values of human rights that underlie the Olympic spirit. The 2008 Olympic Games in Beijing pose a challenge in this regard. Rather than fear the politicization of the Olympic Games, the IOC can recognize the positive impact of the Olympic Games upon the domestic and international policies in human rights. Simply put, the Australian Sports Commission was correct when it recognized that, "[t]he Olympics and politics are not strangers, as they have been linked to one another in many important and subtle ways. In recent years, the popularity of sport has made it a powerful tool."²⁹

¶10 The challenge is to harness this political purpose in a way that is neutral and yet advances the Olympic spirit. The goal should be to promote fundamental notions of human rights such as justice, personal freedom, equality and freedom of expression as part of the spirit and ethics of fair play, free participation, fairness and public access that

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²³ Chowdhury, *supra* note 22.

²⁴ African-American athlete Jesse Owens won gold medals in the 100m, 200m, long jump and 4x100m relay at the 1936 Berlin Olympic Games. These Games have often been coined, the "Nazi Games." *Id.*

²⁵ *Id.*; See *infra* Part III.A.

²⁶ *Id.*

²⁷ Nafziger, *supra* note 12, at 198.

²⁸ *Id.*

²⁹ *Beijing 2008: Taking a Bet on the Olympic Ideal. Will the IOC Heed the Call for Human Rights in Tibet and China?*, FREE TIBET CAMPAIGN BEIJING 2008 REPORT (July 8, 2002), <http://www.freetibet.org/press/olytxt.htm> (last visited Nov. 29, 2005).

underlie the Olympic Charter. The fourth and fifth Fundamental Principles of Olympism expressly require as much, stating:

4. The practise 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. The organisation, administration and management of sport must be controlled by independent sports organizations.

5. *Any form of discrimination* with regard to a country or a person *on ground of race, religion, politics, gender or otherwise is incompatible* with belonging to the Olympic Movement (emphasis added).³⁰

Under the Fundamental Principles of Olympism mandated in the Olympic Charter, the IOC can acknowledge its specific political role and play an active part in bringing about change in the context and practice of international sport through adherence to human rights.

III. THE HISTORICAL USE OF THE OLYMPIC GAMES AS A TOOL FOR HUMAN RIGHTS REFORM

A. *Exclusion of South Africa from the Olympic Games During the Apartheid Era*

¶11 The era of apartheid in South Africa began in 1948 until the process of dismantling occurred from 1990-1994.³¹ The international community condemned apartheid, but was for a long time ineffective in stopping racial discrimination in South Africa.³² In 1956, the ruling National party in South Africa banned interracial sport, including in competition with foreign athletes.³³ In 1958, Norway proposed excluding South Africa from the IOC, and accordingly the Olympic Games, suggesting prohibition from the Games as a weapon against apartheid.³⁴ At the time, the IOC felt they had no cause of action against South Africa and hesitated to issue a boycott. South African NOC (“SANOC”) was given an opportunity to justify its apartheid policies and racial discrimination in sport. The IOC’s initial reluctance to support exclusion was rooted in the Olympic ideal that political actions should stay separate from international sport.³⁵

³⁰ Each of the six Fundamental Principles of Olympism are discussed in Part II. *See supra* Part II.A-B; Olympic Charter, Fundamental Principles of Olympism, *supra* note 7.

³¹ Apartheid means “separateness” in Afrikaans and was a social system enforced by the white minority South African government. Based on a formal legal framework, apartheid segregated the black majority and denied them equal economic and political rights. History of South Africa in the Apartheid Era, <http://en.wikipedia.org/wiki/Apartheid> (last visited Nov. 29, 2005).

³² One step taken against apartheid by concerned groups was removing investments in companies that had significant business interests in South Africa. RICHARD W. POUND, *INSIDE THE OLYMPICS: A BEHIND-THE-SCENES LOOK AT THE POLITICS, THE SCANDALS, AND THE GLORY OF THE GAMES* 115-116 (2004).

³³ ALFRED E. SENN, *POWER, POLITICS, AND THE OLYMPIC GAMES* 119 (1999).

³⁴ *Id.*

³⁵ Nafziger, *supra* note 12, at 190; Pound, *INSIDE THE OLYMPICS*, *supra* note 32, at 116.

¶12 The IOC, however, is bound by the Olympic Charter which addresses and prohibits any form of discrimination in the “human right of sport.”³⁶ In the case of South African apartheid, the IOC eventually protested racial discrimination by using an Olympic boycott to uphold the Charter requirements. Opposition to this activism emphasized that South African athletes are then deprived of sport and that the Fundamental Principles of Olympism also prohibit discrimination on the basis of “politics.”³⁷ Even in the face of critics, justified by the plain language of the Olympic Charter, the use of a boycott to combat a strict apartheid policy which limited the South African Olympic team to whites was generally accepted as a technique that did not violate the Olympic Charter.³⁸ One possible rule that could prevent enforcing a boycott of the Olympic Games on a participating country is Rule 6.1: “The Olympic Games are competition between athletes in individual or team events and not between countries.”³⁹ Although this rule broadly applied could prohibit the IOC from excluding South Africa from the Olympic Games to contest its system of apartheid, the rule is interpreted to apply only to the competition itself.⁴⁰ Therefore, the Olympic Charter requirements were deemed to justify boycotting South Africa from the Olympic Games to halt apartheid.

¶13 In addition to the authority of the Olympic Charter, international human rights law may allow an Olympic boycott as an instrument to reform domestic policies violating human rights. The 1978 International Charter of Physical Education and Sport (“ICPES”),⁴¹ a UNESCO resolution, expands the United Nations’ commitment to an international standard of basic freedoms and human rights laid out in the Universal Declaration of Human Rights by providing a moral and legal basis to improve the lives of many excluded and disadvantaged people that have a right to sport.⁴² This charter specifically addresses the right to sport, which was denied to black South Africans in the apartheid era. The charter was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) at its twentieth session on November 21, 1978 and states in Article 1.1 that, “[e]very human being has a fundamental right to access to physical education and sport, which are essential for the full development of his personality.”⁴³ South Africa’s apartheid era violation of international sports law, the Olympic Charter, and fundamental human rights law, and the ICPES certainly substantiated a boycott from the Olympics Games as a sanction for a policy of systematic racial discrimination.

¶14 Prior to the 1964 Tokyo Olympic Games, the IOC had avoided using domestic policies as a qualification for membership into the Olympic Movement.⁴⁴ The South

³⁶ In reference to the fourth and fifth Fundamental Principles of Olympism. *See supra* note 30.

³⁷ Specifically, the fifth fundamental principle prohibits discrimination on the basis of politics. Nafziger, *supra* note 12, at 224, 248.

³⁸ Since a range of international sanctions had already been imposed against apartheid, discrimination against South African athletes may be regarded as a legitimate response to racial discrimination by the government. *Id.* at 248.

³⁹ Olympic Charter, Olympic Games 16, *supra* note 7.

⁴⁰ Nafziger, *supra* note 12, at 248.

⁴¹ INTERNATIONAL CHARTER OF PHYSICAL EDUCATION AND SPORT (1978),

http://www.unesco.org/education/information/nfsunesco/pdf/SPORT_E.PDF (last visited Nov. 29, 2005).

⁴² Bruce Kidd & Peter Donnelly, *Human Rights in Sports*, INTL. REV. FOR THE SOCIOLOGY OF SPORT 35/2, 131, 136 (2000).

⁴³ INTERNATIONAL CHARTER OF PHYSICAL EDUCATION AND SPORT, *supra* note 41, art. 1.1.

⁴⁴ Senn, *supra* note 33, at 132.

African boycott was implemented in the Tokyo games. When questioned in 1963, the SANOC gave no affirmative answer that blacks would be welcome as members of the South African Olympic team; thus, the IOC rescinded its invitation to South Africa for the Tokyo Games.⁴⁵ In response, the South African government simply reaffirmed its policies against “competition in sport between the races” and restated the policy that the “mixing of races” within South Africa and abroad would be avoided.⁴⁶

¶15 In preparation for the 1968 Mexico City Games, the IOC named an investigating commission to visit South Africa under the instruction that, “[w]e [the IOC] must not become involved in political issues nor permit the Olympic Games to be used as a tool or as a weapon for an extraneous task.”⁴⁷ Although the South African government was found to have adopted a non-discriminatory policy of training, selecting and lodging its Olympic athletes, the apartheid system still enforced segregated competition.⁴⁸ The IOC considered South Africa’s reform since 1964 enough to comply with the Olympic Charter, but after thirty-two nations threatened to boycott unless South Africans were excluded, the apartheid-ridden country was again barred from participating in the Olympic Games.⁴⁹ In support of the IOC, the United Nations General Assembly “requested all states and organizations to suspend domestic sports competition with South Africa and with any organizations and institutions in that country that practiced apartheid.”⁵⁰ The boycott of South Africa from the Olympic Games continued for twenty-eight years.

¶16 In the midst of dismantling the apartheid system, a mixed South African Olympic team participated in the 1992 Barcelona Games.⁵¹ Although it is difficult to attribute the new, multiracial, democratic, constitutional system of South Africa in 1994 to the Olympic boycott alone, IOC sanctions certainly contributed to the gradual transformation of a South African society to one that respects racial equality. Due to the importance of sports in South African culture, the exclusion of its teams from the Olympic Games sent a powerful message and was an effective resource to induce human rights reform.⁵² Nelson Mandela, who had been imprisoned for defying apartheid law, said South African presence at the Games after the apartheid era had a “significance which goes beyond the boundaries of sport.”⁵³ There is no question that the visibility and significance of the Olympic Games opened the playing field to all South Africans, regardless of race. More than international condemnation or charters, the Games create a logical opportunity to bring about reform in a way that widely visible.

⁴⁵ *Id.* at 133.

⁴⁶ *Id.*

⁴⁷ This instruction was issued Avery Brundage, President of the IOC for twenty years from 1952-1972, who hoped to keep South Africa in the Olympic family. *Id.* at 135.

⁴⁸ Nafziger, *supra* note 12, at 224.

⁴⁹ The United Nations Committee on the Elimination of Racial Discrimination called for prompt execution of this resolution. *Id.* at 225.

⁵⁰ *Id.*

⁵¹ Bishop Desmond Tutu, a black South African leader, protested South Africa’s participation in the Games, but the African National Congress, led by Nelson Mandela, chose not to interfere. Senn, *supra* note 33, at 240.

⁵² Nafziger, *supra* note 12, at 230.

⁵³ *Id.*

B. The Seoul Olympic Games as a Catalyst for Change

¶17 The 1988 Seoul Olympic Games is perhaps the best example of how the IOC can utilize the Olympic bid and Games as a positive force for human rights reform. The relevance of this to the 2008 Olympic Games in China is apparent. China's current human rights record is quite analogous to that of the the unstable government that ruled South Korea when it received the bid to host the Olympic Games. It is especially relevant that both cases involve the positive act of hosting, rather than boycotting the games. The 1988 Seoul Olympics were a transition point for South Korea "from dictatorship to democracy"⁵⁴ because the Games accelerated South Korea's move toward a genuine democracy rather than one laced with corruption, assassinations and instability.⁵⁵ Throughout the last century, Korea's history of colonialism and domination created a strong sense of nationalism that aided its success as host of the 1988 Olympic Games.⁵⁶ South Korea viewed its role as host as an opportunity for the world to recognize its successes, accept it as a prosperous nation and welcome it into the Olympic Movement. Outsiders believed that domestic political clashes would triumph.⁵⁷ Instead, Koreans were committed to a successful hosting of the Games and were willing to change to do so.⁵⁸

¶18 The Confucian concept of national harmony under a strong and hierarchical leadership and the conservative Korean military were traditions that the populace seemed willing to trade for an increased standard of living, economic prosperity, a broader base of education and freedom of expression.⁵⁹ Even President Chun Doo Hwan, a former army general who came into power following the assassination of his predecessor, did the unexpected and left office at the end of his term.⁶⁰ In the 1987 Presidential election, partially attributable to Chun's commitment to leave office under the pressure to impress the world prior to the Olympic Games, President Roh Tae Woo was elected through a genuine democratic process.⁶¹ As hosts of the 1988 Olympic Games, "the Koreans would *never* have countenanced losing face on their own account."⁶² The 1988 Olympic Games contributed to an "awakening to democracy" and "newfound political maturity" by the Korean people.⁶³ The 1988 Seoul Olympic Games resulted in international visibility and increased pressure for a democratic Korea.⁶⁴

⁵⁴ Chowdhury, *supra* note 22.

⁵⁵ A series of coups starting in 1960, sometimes including assassinations and often backed by factions of the Korean army, prevented the orderly change of government in South Korea for years. In 1960, former President Syngman Rhee was removed; in 1979, former President Park Chung Hee was assassinated and replaced with Chun Doo Hwan. RICHARD W. POUND, *FIVE RINGS OVER KOREA: THE SECRET NEGOTIATIONS BEHIND THE 1988 OLYMPIC GAMES IN SEOUL* 7 (1994).

⁵⁶ Korean history includes conflict and domination by Japan, Russia, the Soviet Union and the United States. *Id.* at 319.

⁵⁷ *Id.* at 322.

⁵⁸ *Id.* at 320.

⁵⁹ *Id.* at 319-320.

⁶⁰ Chun was seen as an unapproachable figure and was unattractive to the populace. Many Koreans feared that the Chun government would be militant. *Id.* at 321.

⁶¹ Roh Tae Woo was hand-picked by Chun to represent their party, but a valid election placed Roh in office as Chun's successor. *Id.*

⁶² *Id.* at 322.

⁶³ David M. Waters, *Korean Constitutionalism and The 'Special Act' to Prosecute Former Presidents Chun Doo-hwan and Roh Tae-woo*. 10 COLUM. J. ASIAN L. 461, 481 (1996).

⁶⁴ Randall Green, *Human Rights and Most-Favored-Nation Tariff Rates for Products from the People's*

¶19 The IOC also played a valuable role in the success of the Seoul Games. Rather than shy away from politics, the IOC embraced the Seoul Olympic Games as a “nakedly political issue.”⁶⁵ At the time Seoul was awarded the Olympic bid, the proactive Juan Antonio Samaranch was President of the IOC.⁶⁶ The Samaranch-led IOC did not want to be reactive and place their trust in others to create favorable conditions for the Seoul Games.⁶⁷ Instead, the IOC took a drastic step away from the philosophy that sport and politics do not mix and established contact with the powers involved in the international political landscape at the time.⁶⁸ The central message sent by the IOC was that countries could be part of the solution to lessening tensions with South Korea and that boycotting the 1988 Olympic Games would not be an effective political tool.⁶⁹ The result of IOC diplomatic action was a political perspective that Olympic boycotts were futile because it hurt a country’s people for no political gain. An Olympic boycott can annoy or enrage a target country, but its effectiveness is limited by its occurrence every four years for a period of sixteen days.⁷⁰ Under IOC influence, the 1988 Seoul Olympic Games had full participation with a few insignificant holdouts from countries motivated by propaganda unrelated to the current tensions.⁷¹ Moreover, an international consensus of respect for the IOC was established.

¶20 Critics of the Seoul Olympic bid, using similar logic as critics of the 2008 Beijing Olympic bid, believed that a country essentially under military rule committing human rights abuses was inappropriate to host a major sporting event for the international community. However, the 1988 Seoul Games was a major catalyst for political change in Korea since global recognition of the Games helped boost democracy and proved that Seoul could overcome a tradition of corruption and human rights abuse and respond to the expectations of the rest of the world.⁷² The Olympic Games prompted the thriving democracy of South Korea today. Human rights in Korea were liberated as a result of public opinion during the 1988 Seoul Olympics and the same can be done in Beijing. One scholar has suggested that, “Beijing’s human rights record should have been a factor in favor of awarding the Olympic Games to Beijing, for the very reason that, as in Seoul, civic pride would lead the Chinese toward improvement of human rights conditions.”⁷³

Republic of China. 17 U. PUGET SOUND L. REV. 611, 633 (1993-1994).

⁶⁵ Pound, FIVE RINGS OVER KOREA, *supra* note 55, at 334.

⁶⁶ Juan Antonio Samaranch was elected President of the IOC on a first-ballot win, a rare occurrence. Prior to his presidency, Samaranch was an economics teacher and directed several companies, establishing his skills as an experienced politician. He is known as a patient person who would rather put in the effort to avoid a problem than be called upon to solve it later. *Id.* at 12-13, 335.

⁶⁷ *Id.* at 50.

⁶⁸ The IOC consulted with political leaders from North Korea, Cuba, the United States, the Soviet Union, China and Japan. *Id.* at 51.

⁶⁹ *Id.* at 51, 336.

⁷⁰ *Id.* at 337.

⁷¹ *Id.* at 336-338.

⁷² Hyun-cheol Kim & Gwang-lip Moon, *Olympics Have Special Meaning for South Koreans*, THE KOREA TIMES, August 12, 2004, <http://times.hankooki.com/lpage/2004olympic/200408/kt2004081219561760940.htm> (last visited Nov. 29, 2005).

⁷³ Green, *supra* note 64, at 633 n.124.

C. Ineffective Use of the Moscow Olympic Games as a Weapon, Rather than as a Vehicle for Reform

¶21 Scholars who suggest utilizing the Olympic Games as a political threat towards countries violating international standards⁷⁴ can look to the 1980 Moscow Games as evidence that use of the Games as a weapon to force human rights reform is ineffective. The American-led boycott of the Moscow Games, issued by President Jimmy Carter and approved by the United States Olympic Committee (“USOC”), was attributed to a U.S. protest of Soviet treatment of political dissidents, protection of American nationals and finally, the Soviet invasion of Afghanistan.⁷⁵ President Carter compelled the USOC to withdraw from the 1980 Moscow Olympic Games by issuing warnings to Olympic athletes and by barring the exportation of goods or payments to the Soviet Union.⁷⁶ President Carter’s initial policy statements emphasizing the protection of Americans and the pursuit of peace and human rights by resisting Soviet expansionism collapsed, leaving a disingenuous boycott actually motivated by the Cold War American-Soviet rivalry.⁷⁷

¶22 The boycott was futile, however, as the Soviets remained in Afghanistan and were undeterred from expansionism. Furthermore, rather than risk being viewed as succumbing to foreign pressures, the Soviet Union hardened its position by increasing restrictions upon Soviet dissidents.⁷⁸ Moreover, the boycott of the Moscow Games induced retaliation resulting in a Soviet boycott of the 1984 Los Angeles Olympic Games. The American-led boycott of the 1980 Moscow Olympics appeared ineffective in achieving US political goals. Use of the Games as a weapon to force reform discouraged exactly what should be encouraged: “using sports rather than war to affirm nationalism.”⁷⁹ The Olympic Games are an opportunity for positive publicity in the eyes of the world. Rather than utilize the Games as a weapon to coerce reform, the Games can be a vehicle for change by requiring the host country and participants to fully adhere to the high ideals of the Olympic principles.

IV. THE SITUATION IN CHINA

A. China’s Motivation, Preparation and Status as Host of the 2008 Olympic Games

¶23 To understand how hosting the Beijing Olympic Games will provide incentives to reform human rights practices in China, it is necessary to first comprehend the situation in China leading up to the Games. China’s desire to host the Olympic Games is rooted in pride, competition and prestige. The Olympic Games are the most eminent sporting event in the world known for creating heroes and memories of a lifetime on the international stage.⁸⁰ Similar to the Soviet interest in hosting the 1980 Moscow Games during the Cold War, the Chinese interest in the Olympic Games serve in some respects to validate national achievement. All of China is looking toward 2008 as an opportunity

⁷⁴ See Mastrocola, *supra* note 5.

⁷⁵ Nafziger, *supra* note 12, at 210, 260.

⁷⁶ *Id.* at 260-261.

⁷⁷ *Id.* at 262-264.

⁷⁸ *Id.* at 265.

⁷⁹ *Id.*

⁸⁰ Pound, *INSIDE THE OLYMPICS*, *supra* note 32, at 2.

for China to present itself in a positive light to the rest of the world. The Games provide an unparalleled opportunity to promote the host country and highlight its people, culture, industry and tourism.⁸¹ It is one of the largest peaceful gatherings in the world, where eleven thousand athletes from more than two hundred countries and territories compete and are watched by four billion spectators.⁸² Specifically, China, the world's most populous country – home to 1.2 billion people or 22 percent of the world's population – is expecting over a billion dollars in revenue and a profit of \$120 million by hosting the Olympic Games.⁸³ Beijing as a host city presents numerous sponsorship opportunities for China, along with an opportunity to showcase China's history and cultural attractions such as the Great Wall and the Forbidden City.⁸⁴ Logistically, the Chinese are so far ahead of schedule with venue and event preparations that IOC President Jacques Rogge asked for construction to be slowed down.⁸⁵ China's desire to host the Olympic Games undoubtedly is economically motivated, but economic incentives may pale in comparison to the prestige dividend. More important than economic gain, a successful hosting of the 2008 Olympics is an obvious and apparent platform towards international prestige.⁸⁶

¶24

Thus, the Olympic Games are a chance for the Chinese people to gain large-scale positive international recognition. China has not been shy in recognizing its numerous gold medal winners throughout the history of the Olympic Games⁸⁷ and has made its elite athletic programs a top priority in preparation to surpass the United States in gold medals at the 2008 Olympic Games.⁸⁸ Ultimately though, the 2008 Beijing Olympic Games will not just be about building tourism, venue preparation or gold medal success. The darker undercurrent of human rights abuses throughout Chinese history will also be on display. China will go to great pains to counter international expressions of concern.⁸⁹ The world is acutely aware of the 1989 Tiananmen Square incident, in which the Chinese army left hundreds of pro-democracy demonstrators dead.⁹⁰ Current human rights issues directly related to the 2008 Olympic Games are being tracked by organizations such as Human

⁸¹ Pound, *FIVE RINGS OVER KOREA*, *supra* note 55, at 4.

⁸² *Id.*

⁸³ Lena H. Sun, *China Pulls Out Stops in Olympic Bid; Political Factors Dominate in Beijing Try for 2000 Games, With Chances Uncertain*, WASH. POST, July 15, 1993, at D1.

⁸⁴ *Id.*

⁸⁵ Rogge asked the Chinese to slow down construction and stated, "This is the first time since I've been involved in the Olympic Movement that I have ever known this to happen." Filip Bondy, *Beijing Games May be Chinese Victory Party*, MSNBC, Sept. 1, 2004, <http://www.msnbc.msn.com/id/5837943> (last visited Nov. 29, 2005).

⁸⁶ Sporting events enable countries to gain international prestige. Simple propaganda allows a country to glorify its particular political system, whereas international prestige may allow a country to show it is a valuable economic partner or vacation spot. James A.R. Nafziger & Andrew Strenk, *The Political Uses and Abuses of Sports*, 10 CONN. L. REV. 259, 273 (1978).

⁸⁷ A list of Chinese Olympic champions is available on the Beijing 2008 official website. Chinese Olympic Champions, <http://en.beijing-2008.org/02/11/column211621102.shtml> (last visited Nov. 29, 2005).

⁸⁸ At the 2004 Athens Olympic Games, China captured medals in fifteen different sports, including several power events, and earned only three less gold medals (32) than the leading United States (35). Bondy, *supra* note 85.

⁸⁹ This Comment recognizes that accusations of human rights abuses in China are sometimes inconclusive. Every country, including the United States, has a record of human rights violations. This Comment focuses upon and accepts certain human rights violations in China as a timely example due to the upcoming 2008 Beijing Olympic Games. This Comment is not an analysis of the severity and complexity of China's human rights abuses, but instead, an acceptance that human rights violations exist worldwide and thus, can benefit from using the Olympic Games as a medium for reform, starting with China.

⁹⁰ Sun, *supra* note 83, at D1.

Rights Watch⁹¹ and will also be on the minds of the international community. China's human rights problems include actively limiting expression of dissent⁹², banning opposition political parties and religious groups independent of the government, controlling labor activism and public protest, severely constraining public information and the press, widespread prisoner abuse and torture and prohibiting the work of human rights groups.⁹³ The international concern for human rights reform in China is a defining characteristic of the 2008 Olympic Games. What follows is a detailed explanation of certain human rights concerns in China directly related to the 2008 Olympic Games. Specifically, China's censorship practices, its limited labor rights and the issue of forced evictions due to Olympic Games preparation are set to have direct impact on the conduct of the Olympics. These are areas where adherence to the IOC Charter and principles are directly implicated and where IOC pressure will be clearly appropriate.

B. Human Rights Issues in China related to the 2008 Olympic Games

1. Censorship: Freedom of Speech and the Press

¶25 Article 35 of the Constitution of the People's Republic of China states: "[c]itizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."⁹⁴ However, the lack of a system of constitutional judicial review in China means that the Constitution can not be used to overcome draconian restrictions on free expression and the press. What often governs in a Chinese court of law is the broad scope of Regulations,⁹⁵ which concern human rights activists who are especially worried that government censorship in China will expand as journalists assemble in Beijing for the 2008 Olympic Games. Chinese restraints address nearly every form of communication, including television⁹⁶, the internet⁹⁷, and

⁹¹ Human Rights Watch, an independent, nongovernmental organization dedicated to protecting the human rights of people around the world, is most concerned with the censorship, labor rights and evictions issues directly related to the 2008 Beijing Olympic Games. Beijing 2008: Human Rights and the Olympics in China, <http://www.hrw.org/campaigns/china/beijing08/index.htm> (last visited Nov. 29, 2005).

⁹² Qin Yongmin was detained without charge or trial because he wrote a number of letters to the IOC and Chinese authorities opposing the Olympic bid for China due to the enormous cost faced by a host country and its people. Sun, *supra* note 83, at D1.

⁹³ China Olympics Watch, <http://hrw.org/campaigns/china/Beijing08/intro.htm> (last visited Nov. 29, 2005).

⁹⁴ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 4, art. 35.

⁹⁵ International Agreements and Domestic Legislation Affecting Freedom of Speech, <http://www.cecc.gov/pages/virtualAcad/exp/explaws.php#securitylaws> (last visited Nov. 29, 2005).

⁹⁶ Article 4 of *Measures on the Administration of Foreign Satellite Television Channel Reception* states: Applicants to distribute foreign satellite television channels shall have the following qualifications:

(4) The channel which is being applied for and its directly related agencies shall be friendly toward China, and have long term friendly broadcasting exchanges and cooperation with China.

Article 20 of *Regulations on the Administration of Television Dramas* states: No television drama may be distributed, broadcast, imported or exported unless it has been examined and granted a "Television Program Distribution License" by a Television Program Examination Organ established by a broadcast television executive department at the provincial level or higher. Id.

⁹⁷ Article 5 of *Measures on the Administration of Broadcasting Audio/Visual Programs over the Internet or Other Information Networks* states: The State Administration of Radio, Film and Television shall implement permitting administration of the operators of Internet broadcasting of audio/visual programs. Anyone transmitting audio/visual programs to the public via the Internet must possess an "Internet Audio/Visual Program Transmission License." Article 23 of *Regulations on the Administration of Internet Access Service Business Establishments [Internet Cafes]* states: Units operating Internet Access Service

newspapers.⁹⁸ Given the dependence of the Olympic Games on widespread publicity unencumbered reportage is of great concern to the success of the games. The Criminal Law of China states:

Use of rumor mongering or defamation or other means to incite subversion of the national regime or the overthrow of the socialist system shall be punished by a sentence of five years or less of imprisonment, criminal detention, supervision or deprivation of political rights.⁹⁹

Although Chinese laws do address legitimate crimes, many of the laws include provisions that are undefined and overbroad, allowing opportunities for inappropriate government censorship.

¶26 Even if Chinese laws allow censorship by the state, freedom of expression during the Olympic Games can be enforced through international law. As a member of the United Nations, China will be expected to abide by the Universal Declaration of Human Rights, which ensures that everyone has the right to freedom of opinion and expression.¹⁰⁰ Additionally, the International Covenant on Civil and Political Rights, which China signed in 1998 but has not ratified, protects the right to hold opinions without interference, the right to information and the right to free expression.¹⁰¹ A number of Chinese laws and regulations restricting freedom of speech and the press are likely to be directly implicated by the large foreign presence during the hosting of such a major international event. The 2008 Olympic Games provide an opportunity for China to relax its restrictions on the freedom of speech and the press so as to accommodate the huge contingent of international media expected for the Games.

2. Labor Rights Issues

¶27 China self-identifies as a socialist state under a dictatorship led by the working class. Article 42 of the Constitution honors the importance of work:

Work is the glorious duty of every able-bodied citizen. All working people in State-owned enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The State promotes socialist labor emulation, and

Business Establishments shall examine, register, and keep a record of the identification card or other effective document of those customers who go online. *Id.*

⁹⁸ Article 1 of *Notice Regarding the Further Strengthening the Administration of Selection of Articles for Newspapers and Periodicals* states: When selecting manuscripts periodicals must firmly grasp the path of the political consensus, strictly obey the press and publication administrative rules and the Party's propaganda discipline, and adhere to political awareness in manuscript contents. They shall not submit or transmit drafts that are contrary to the guidelines of the Party or the nation. *Id.*

⁹⁹ *Id.* at Criminal Law, art. 105(2) (1997).

¹⁰⁰ "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." UNIVERSAL DECLARATION OF HUMAN RIGHTS, *supra* note 1, art. 19.

¹⁰¹ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (last visited Nov. 29, 2005).

commends and rewards model and advanced workers. The State encourages citizens to take part in voluntary labor.¹⁰²

Yet, Chinese workers often work under harsh conditions, are prohibited from organizing independent unions and do not have the protected right to strike.¹⁰³ The Communist Party controls the one organization, the All China Federation of Trade Unions, which can legally represent workers.¹⁰⁴ Minimal health and safety protections, inadequate wages, inhumane work hours and lack of a voice against labor rights violations concern human rights activists the most.¹⁰⁵ One need only consider the possibility of harsh labor conditions in constructing the Olympic village and operating the games to judge that the IOC has a direct interest in this matter.

¶28 Under the membership obligations of the United Nations, China is obligated to meet the international labor standards of the International Labour Organisation (“ILO”).¹⁰⁶ The standards are aimed at promoting opportunities for “decent and productive work, in conditions of freedom, equity, security and dignity.”¹⁰⁷ Regardless of past labor rights violations, the 2008 Olympic Games can be used as a driving force for China to comply with international labor standards in employing workers to host the Games. China may embrace this opportunity or the IOC would certainly be within its ambit to require China’s compliance as Olympic host.

3. Forced Evictions

¶29 A human rights concern most directly related to the 2008 Olympic Games is the forced eviction of the floating population, homeowners and tenants fueled by urban development in preparation for the Games.¹⁰⁸ One suspects that the excessively early Chinese preparation for the games may be an attempt to take care of the eviction issue before international attention increases immediately prior to the games. Beijing has been accused on past occasions of clearing the streets of the homeless during showcase international events. These evictions violate international standards on the right to housing which recognize the possession of a secure place to live as “one of the fundamental elements for human dignity, physical and mental health and overall quality of life, which enables one’s development.”¹⁰⁹ Local government officials often corruptly work with developers to execute forced evictions and although residents are compensated when evicted, the payment is often insignificant or not forthcoming.¹¹⁰ Compensation for

¹⁰² CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA, *supra* note 4, amend. Two, art. 10.

¹⁰³ Human Rights and the 2008 Olympics in Beijing: Business and Labor Rights, <http://www.hrw.org/campaigns/china/beijing08/labor.htm> (last visited Nov. 29, 2005).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Addresses the needs and challenges facing workers and employers in the global economy. International Labour Standards, <http://www.ilo.org/public/english/standards/norm/introduction/index.htm> (last visited Nov. 29, 2005).

¹⁰⁷ *Id.*

¹⁰⁸ Beijing Construction, Forced Evictions, <http://www.hrw.org/campaigns/china/beijing08/evictions.htm> (last visited Nov. 29, 2005).

¹⁰⁹ Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, <http://www.ohchr.org/english/issues/housing/index.htm> (last visited Nov. 29, 2005).

¹¹⁰ Beijing Construction, Forced Evictions, *supra* note 108.

the evicted is supposed to be covered by developers who should pay the market value of the property.¹¹¹ In reality, this sum must first be given to a government official who often pockets a percentage of the already reduced value.¹¹² Evictions are happening rapidly as government officials are expecting a cost of \$22 billion to bulldoze houses to make way for Olympic venues and improved transportation systems.¹¹³ Demolition of private property usually happens with minimal notice, if any; a Chinese character *chai* meaning “demolish” is simply painted on the front door to notify residents of upcoming demolition.¹¹⁴

¶30 In protest of forced evictions, people have engaged in self-immolation at Tiananmen Square and are creating internet petitions.¹¹⁵ Although a housing rights activist was imprisoned for seeking permission to hold a protest against the evictions, the government has promised reform by allowing more private property ownership, denouncing violence during evictions and developing an effective eviction hearing process.¹¹⁶ It is reported that hundreds of thousands of Chinese are homeless as a result of such forced evictions.¹¹⁷ China must accept that the challenge of hosting the Olympic Games includes reassessing its policies of the destruction and relocation of homes. Then, with the eyes of the world peering in during the Olympic Games, it must correctly and adequately respond to this human rights abuse.

C. Reform in China Directly Prompted by the Olympic Games

1. China's Promises for Reform in a Variety of General Areas.

¶31 When the Chinese Olympic Games bid committee released their emblem and slogan for the 2008 Olympic bid, they described it as fully signifying that Beijing entered the new millennium with a new outlook of policy reform and an “opening to the outside world.”¹¹⁸ The “New Beijing, Great Olympics” slogan was marketed as a boost to spread the Olympic spirit and as a new chapter in the Olympic Movement.¹¹⁹ In a press conference after China was awarded the 2008 Olympic bid, Chinese officials promised Olympic delegates that foreign journalists would be free to report on anything, before and during the Olympic Games.¹²⁰ Institutional changes in domestic policy regarding freedom of speech and the press are necessary to allow the media to do its work during the 2008 Olympic Games, including positively portraying China to the world. A scholar at Hong Kong University, media studies professor Ying Chan, believes that Chinese

¹¹¹ Spencer Anderson, *Olympic Construction in Beijing Leaves Thousands Homeless*, METROVOX, March 10, 2005, <http://www.metrovox.co.uk/news.php?story=129>.

¹¹² *Id.*

¹¹³ Crystyl Mo, *May Your Dreams Come True*, ASIaweek.COM, July 27, 2001, <http://www.asiaweek.com/asiaweek/magazine/nations/0,8782,168211,00.html>.

¹¹⁴ Anderson, *supra* note 111.

¹¹⁵ *Id.*

¹¹⁶ Ye Guozhu was imprisoned for applying for permission to plan a mass protest against forced evictions. *Id.*

¹¹⁷ *Id.*

¹¹⁸ Beijing Unveils Emblem, Slogan for 2008 Olympic Bid, People's Daily Online, <http://english.people.com.cn/english/200002/02/print20000202S101.html> (last visited Nov. 29, 2005).

¹¹⁹ Statement by Liu Qi, President of the Beijing 2008 Olympic Games Bid Committee. *Id.*

¹²⁰ Mo, *supra* note 113.

officials are very much aware of the basic institutional changes that are necessary in China; “It’s in their own enlightened self-interest to keep their promise.”¹²¹

¶32 A variety of other positive developments have been in evidence. In the political realm, in accordance with the Sino-British Joint Declaration returning Hong Kong, China has agreed to permit Hong Kong its Olympic independence.¹²² Although the former British colony is officially a part of the mainland, athletes native to Hong Kong will march into the Olympic stadium behind the Hong Kong flag.¹²³ Environmentally, Beijing has promised to ensure cleaner air by closing all coal-burning urban factories and switching to natural gas in an effort to reduce pollution.¹²⁴ China has committed \$12 billion to close or relocate polluting factories.¹²⁵ Obviously, this promise also brings up concerns of improper evictions that must be addressed. However, after a decade of economic growth, many residents, businesses and drivers have already switched to cleaner fuels.¹²⁶ Beijing itself and the IOC members who approved the 2008 Beijing bid, led by then president Juan Antonio Samaranch, are encouraged that hosting an event as universal as the Olympics could lead to a more tolerant China.¹²⁷ Although Chinese officials do not acknowledge a direct relationship between human rights and the Olympic Games, a “certain link” is recognized.¹²⁸ Wang Wei, secretary general of the Beijing bid, said, “[w]e are confident with the Games coming to China that we are going to enhance not only the economy but social sectors like education, medical care, human rights, et cetera.”¹²⁹

¶33 As another sign of its commitment to reform, the official website of the 2008 Beijing Olympic Games includes a *Public Monitoring* page in English, French and Chinese, which welcomes the public to contact the Audit and Supervision Department of the Beijing Organizing Committee for the Games of the XXIX Olympiad (“BOCOG”) to report any law or discipline violations associated with the Olympic Games preparation of venue construction.¹³⁰ The Supervision Committee of the Beijing Olympic Games welcomes and hopes to strengthen public monitoring of the Olympic Games. In addition to oral promises and dialogue promoting reform, China has made legal strides towards becoming a more liberal society.

¹²¹ *Id.*

¹²² Ian Thomsen, *On Paper, His Words Grow Dim: What Samaranch Said and Didn’t Say*, INTERNATIONAL HERALD TRIBUNE, March 27, 1997, http://www.iht.com/articles/1997/03/27/oly.t_2.php.

¹²³ *Id.*

¹²⁴ Lena H. Sun, *China in Full Press For 2000 Olympics; Authoritarian Rulers Make Unusual Promises*, THE WASHINGTON POST, March 6, 1993, at A24.

¹²⁵ Mo, *supra* note 113.

¹²⁶ Velisarios Kattoulas, *For Beijing, Chance for Olympic Glory*, INTERNATIONAL HERALD TRIBUNE, Aug. 31, 2000, http://www.iht.com/articles/2000/08/31/a20_9.php.

¹²⁷ Christopher Clarey, *IOC Vote Is More Than Fun and Games to Olympic Finalists*, INTERNATIONAL HERALD TRIBUNE, July 13, 2001, http://www.iht.com/articles/2001/07/13/ioc_ed3_.php.

¹²⁸ As stated by Liu Jingmin, Executive Vice President of the Olympic bid committee. Kattoulas, *supra* note 126.

¹²⁹ *Id.*

¹³⁰ Public Monitoring, <http://en.beijing-2008.org/65/29/column211612965.shtml> (last visited Nov. 29, 2005).

2. China's Legal Reform Directly Related to Sport: The Sports Law of the People's Republic of China

¶34 The Eighth National People's Congress ("NPC") enacted the People's Republic of China's ("P.R.C.") first sports law in 1995, effective on October 1.¹³¹ Although the process of drafting China's first sports law began in 1980¹³², it was China's loss of the 2000 Olympic Games bid that prompted rapid completion of the sports law.¹³³ The enactment of China's Sports Law provides perspective on China's role in the global sports arena and represents the country's willingness to stray, though slight, from traditional Maoist-socialist ideologies.¹³⁴ Although the legislation confirms state control over sports and Maoist principles of nation-building and physical culture, the Sports Law also shifted much of the daily control of sports in China to nongovernmental associations.¹³⁵ The national sports policy, issues of funding and sanctions against athletes for non-criminal violations are now under the control of "market-oriented, western-style sports associations" rather than the Chinese government.¹³⁶ Furthermore, the Sports Law puts China in harmony with the international trend of using mediation and arbitration for dispute resolution.¹³⁷ The Sports Law gives nongovernmental sports associations authority in resolving disputes in competitive sports. Article 33 of the Sports Law states that "[a]ny disputes arising in competitive sports shall be subject to mediation and arbitration by organs established for sports arbitration,"¹³⁸ allowing private organizations the authority to mediate and arbitrate disputes. Of course, the full independence of "private organizations" in China is always in a degree of doubt. But, at a minimum, this move and the publicity associated with its implementation in the Beijing Olympics will move things somewhat beyond the classic communist model of state-sponsored and controlled sport.

¶35 The first four chapters of the Sports Law reinforce China's commitment to a physical culture and lays out basic policies for the state, community sports, school sports and competitive sports.¹³⁹ Chapters five and six are entitled "Sports Associations" and "Supporting Conditions," respectively, establishing the authority of private, nongovernmental sports associations and how sports activities are supported through centrally and locally allocated financial resources and investments.¹⁴⁰ Chapter seven, "Legal Liability," addresses crimes such as gambling on sports and drug-use, all of which

¹³¹ The Sports Law contains 56 articles in eight chapters. Nafziger, *supra* note 12, at 353, app. II, Annex.

¹³² Wang Meng, Minister of the State Physical Culture and Sports Commission ("SPCSC") at the time, proposed drafting China's first sports law. After the 1980 Moscow Games, the SPCSC collected foreign sports laws as a reference and guideline for legislation. *Id.* at 337.

¹³³ *Id.* at 343.

¹³⁴ Maoist principles suggest that mass sports should serve "the people" and have patriotic significance. Achievement in sports, especially in international competition, confirms superiority of the socialist system and the health of the Chinese people. Mao Zedong, whose Communist party was victorious in the Chinese Civil War and became the ruling party of mainland China under his reign, believed that "a healthy body and mind begets a strong nation." *Id.* at 334-335; See J. M. HOBERMAN, SPORTS AND POLITICAL IDEOLOGY 219-220 (1984).

¹³⁵ James A.R. Nafziger and Li Wei, *China's Sports Law*, 46 AM. J. COMP. L. 453, 453 (1998).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Nafziger, *supra* note 12, at 353, app. II, Annex, art. 33.

¹³⁹ *Id.*, chs. 1-4.

¹⁴⁰ *Id.*, chs. 5, 6.

are sanctioned administratively.¹⁴¹ Chapter eight includes “Supplementary Provisions” that recognize sports activities inside the armed forces and when the Sports Law took effect.¹⁴² Within the framework of the eight chapters of the Sports Law, the Chinese government in theory promotes a modern, Western-style organizational structure for the commercialization of sports to create a more profitable sports industry in China.¹⁴³ Historically, sports funding in China was from governmental sources that executed limitations on the use of the funding.¹⁴⁴ Under the Sports Law, the sports industry is supposed to have more responsibility, independence and flexibility; free from repressive government regulation.

¶36 The purpose behind China’s Sports Law is to become a leader in global sports and to develop a legal regime for sports in China. Although the legislation has adhered to traditional socialist principles, it also includes innovative provisions handing over authority to nongovernmental institutions. The Sports Law not only advances the organizational structure of sports in China, but implies greater change.

China also appreciates the role of sports in overcoming tarnished images of its government and in bidding for greater leadership in global affairs. In sum, the law encourages a large-scale, on-going program of sports development that China hopes will serve her larger interests. The runup to the 2008 Olympic Games will be a test of the efficacy of the Sports Law.¹⁴⁵

The progressive nature of the Sports Law could pioneer human rights reform in China through sport and the Olympic spirit by supporting further development of the private sector and private rights.

V. USING THE OLYMPIC BID TO COMBAT HUMAN RIGHTS VIOLATIONS: THE ROLE OF THE IOC

¶37 Although the Olympic Games have created significant incentives for progress in China’s human rights reform with oral commitments and legal development, skepticism exists that a more open and liberal China will result from hosting the 2008 Olympic Games.¹⁴⁶ Rivals who do not believe China will embrace human rights reform as host of the Olympic Games emphasize that neither the 1968 Mexico Games nor the 1980 Moscow Games increased respect for human rights in either country.¹⁴⁷ Claude Bebear, who chaired the 2008 Paris Olympic bid, does not value the Olympics as a tool for inducing human rights reform because of its “one-shot deal” format.¹⁴⁸ Rather than creating long term reform, such as developing trade, the Games “. . . can have the inverse

¹⁴¹ *Id.*, ch. 7.

¹⁴² *Id.*, ch. 8.

¹⁴³ Nafziger, *supra* note 12, at 345.

¹⁴⁴ *Id.* at 345-347.

¹⁴⁵ *Id.* at 351.

¹⁴⁶ Clarey, *supra* note 127.

¹⁴⁷ *Id.*; Sun, *supra* note 83, at D1.

¹⁴⁸ Clarey, *supra* note 127.

effect. It can permit the regime in question to say we are recognized by the world.”¹⁴⁹ Moreover, an Olympic Games host may not be deterred from offensive activity since a country granted host status often will not host the Games again in the near future. The IOC will certainly be aware of these concerns. Although skeptics continue to accuse China’s leaders of exploiting the Olympic spirit,¹⁵⁰ China’s role as host of the Olympic Games creates an unprecedented opportunity for the IOC to utilize the Games as provocation for human rights reform. There is thus a major burden on the IOC to make the 2008 Olympic Games a force for change in China.

¶38 The IOC defines itself as a nongovernmental organization (“NGO”) and with that identity, carries certain responsibilities and moral persuasion.¹⁵¹ Global challenges force states to recognize its limited capacity in responding effectively to tasks such as protecting human rights.¹⁵² Article 71 of the United Nations Charter recognizes NGOs as consultants to the Economic and Social Council.¹⁵³ NGOs, even if created as domestic corporations, serve to represent the non-state sector: society.¹⁵⁴ Thus, NGOs play an increasingly important role in international law as “agents of the public interest.”¹⁵⁵ Although the IOC is a lesser known NGO,¹⁵⁶ it still defines itself as one and fits the description of an NGO under the requirements of the United Nations Economic and Social Council.¹⁵⁷ The IOC is currently recognized as the “world government” in the field of sports and acts autonomously within the legal order of the Olympic Games, assuming supreme jurisdictional power over affairs in amateur athletics.¹⁵⁸ As an NGO with complete control over any activity related to the Olympic Movement, including the decision of Olympic Games host country, the IOC has the opportunity to play an active role in the protection of human rights. The IOC’s authority as an NGO can be utilized more effectively to effectuate political and social change.

¶39 One possibility for the IOC to assert its power as an influential NGO is to withhold the privilege of hosting the Olympic Games from China as a threatening weapon for

¹⁴⁹ *Id.*

¹⁵⁰ *Too Soon for China: Reject Beijing’s Bid for 2008 Olympics*, OBSERVER, July 1, 2001, <http://observer.guardian.co.uk/china/story/0,10604,515137,00.html>.

¹⁵¹ *United States Senate Committee on Commerce, Science, and Transportation*, *supra* note 17.

¹⁵² Stephan Hobe, *Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organizations*, June 1998, <http://www.globalpolicy.org/ngos/role/intro/def/2000/challeng.htm>; Jost Delbruck, *The Role of the United Nations in Dealing With Global Problems*, 4 *IND. J. GLOBAL LEGAL STUD.* 277, 281-283 (1997).

¹⁵³ U.N. Charter, Art. 71.

¹⁵⁴ Hobe, *supra* note 152.

¹⁵⁵ *Id.*

¹⁵⁶ An example of well known NGO is Amnesty International (“AI”). AI is a worldwide movement of people who campaign for internationally recognized human rights, is independent of any government and currently has over 1.8 million members, supporters and subscribers who are united by the fight for human rights. AI mobilizes volunteer activists in over 150 countries and territories in every region of the world. About Amnesty International, <http://web.amnesty.org/pages/aboutai-index-eng> (last visited Nov. 29, 2005). This Comment does not expect the IOC to achieve the success of AI, but emphasizes that its role as an NGO should be utilized more effectively.

¹⁵⁷ The ECOSOC requires NGOs to be founded by private individuals; be independent of states; be oriented toward the rule of law; pursue public rather than private interests as an objective; demonstrate a transnational scope of activities; and possess a minimal organizational structure. E.S.C. Res. 1296, U.N. ESCOR, 44th Sess., Supp. No. 1, at 21, (1968).

¹⁵⁸ Hobe, *supra* note 152.

human rights reform.¹⁵⁹ This action would be similar to the IOC sanctions against South Africa which are credited with changing the oppressive apartheid system. Sanctions are legal under Chapter VII of the United Nations Charter and are often recognized as a means of exerting international influence beyond diplomatic mediation, but below the threshold of military intervention.¹⁶⁰ Sanctions are not meant to punish, but instead, use coercive pressure to alter behavior that is breaking or endangering international peace; emphasizing the disapproval of inappropriate behavior and deterring other states from violating or disregarding international law.¹⁶¹ In the past, United Nations Secretary-General Boutros Boutros-Ghali has proposed exclusion from the Olympic Games as an effective tool to express the disapproval of the international community.¹⁶² Unlike South Africa, however, China is an Olympic, United Nations and economic powerhouse on the international forum. With this in mind, the IOC already named Beijing as the 2008 Olympic Games host city and to suggest sanctions in retrospect is an illogical use of the IOC's political muscle as an NGO. When choosing a host city, one IOC official stated, "[i]f we always picked a city wearing a halo . . . we wouldn't have had enough cities to host the games."¹⁶³ Thus, sanctions excluding China from hosting the Olympic Games are not a practical modern day solution. Instead, the IOC should consider using the Olympic bid to affect positive change in future host countries.

¶40 A better proactive method to influence human rights reform in an Olympic Games host country would be for the IOC to fulfill its responsibility of ensuring an Olympic atmosphere free of repression and discrimination by adopting a code of conduct that includes both a set of principles and a method of enforcement.¹⁶⁴ Perhaps sanctions could be utilized only as an enforcement technique. Principles of the code could address issues of censorship, labor rights, forced evictions and also require inspection teams such as those used by the United Nations to investigate potential weapons of mass destruction. Because the development of a code will take time, an interim measure could be written assurances to the IOC that human rights reform will occur and to ensure that oral promises are carried out.¹⁶⁵

¶41 Human Rights Watch does not oppose Beijing as an Olympic host city because it will focus attention on China's human rights violations on the world stage.¹⁶⁶ However, Human Rights Watch wants written commitments from the communist, totalitarian Chinese government that its low tolerance for dissent will be reformed during the Olympic Games. At the very least, human rights organizations want China to commit to no use of military power against peaceful democratic protest, a moratorium on the death penalty, a democratic government for Hong Kong, open conversation with the Tibetan

¹⁵⁹ See Mastrocola, *supra* note 5.

¹⁶⁰ Manfred Kaules & Dorothee Starck, *Peace Through Sanctions?*, Policy Paper 7 of the Development and Peace Foundation, Bonn, Germany, Jan. 15, 1998, <http://www.globalpolicy.org/security/sanction/kulesa.htm>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Sun, *supra* note 83, at D1.

¹⁶⁴ Sidney Jones, *Require Rights Guarantees From Olympic Hosts*, INTERNATIONAL HERALD TRIBUNE, July 11, 2001, http://www.iht.com/articles/2001/07/11/edjones_ed2_.php.

¹⁶⁵ *Id.*; Questions & Answers: China and the Olympic Games 2008, <http://www.hrw.org/backgrounder/asia/q&a-china0305.htm> (last visited Nov. 29, 2005).

¹⁶⁶ *Id.*, Questions & Answers: China and the Olympic Games 2008.

government in exile and the abolition of slave labor camps.¹⁶⁷ Another strategy could be requiring open press coverage which will enable the world public access to China and perhaps deter further human rights violations. Although oral commitments of reform have been made by the Chinese government, violations which occurred when China hosted the 1990 Asian Games require that the IOC take a more proactive stand in regards to motivating positive change. During the 1990 Asian Games, the international media was restricted and discriminated against based on their political or religious views or country of origin, arrests were made for peaceful protest, suspected dissidents were rounded up prior to the arrival of the Asian Games and “contributions” were automatically deducted from the paychecks of Chinese residents to support the Games.¹⁶⁸ Human Rights Watch does not request written commitments that human rights violations will stop beyond the Olympic Games and regulation beyond the Games is not within the authority of the IOC. However, the IOC should at least recognize that it can be a positive force for change and a catalyst for human rights reform in the future. The IOC should embrace its authority and develop substantial guidelines for human rights that conform to its Charter and principles. These may be generally applicable to host countries in the seven years it prepares to host and the sixteen days it serves as host of the Olympic Games.

¶42 As the governing body of amateur sports, the IOC can easily focus its attention solely on athletics and disregard the role it could play in achieving international cooperation for a “common standard” of basic freedoms and human rights – the purpose behind the creation of the United Nations Universal Declaration of Human Rights.¹⁶⁹ Also, the IOC could rely upon the corporate sponsors of the Olympic Games to enforce human rights reform. As suggested by Human Rights Watch, media companies could promote freedom of expression in the press and on the internet, sportswear companies could uphold fundamental labor rights and construction and transportation companies could insist on full transparency of land acquisitions to justify evictions.¹⁷⁰ The corporate partner sponsors currently listed on the Beijing 2008 Olympic Games website include: Coca-Cola, Kodak, McDonalds, Visa, UPS, Tsingtao, Adidas, Air China, Bank of China, General Electric, and Volkswagen.¹⁷¹ Although the corporate sponsors should be involved in human rights reform, the private sector alone will not propel China towards change.

¶43 The IOC could refuse the burden of prompting human rights reform just as the World Trade Organization (“WTO”) did when it approved China’s bid to join its membership.¹⁷² The member governments of the WTO clearly stated that China’s

¹⁶⁷ Human Rights Organization Unveil “Minimum Standards for Beijing 2008,” Aug. 29, 2004, <http://www.olympicwatch.org/news.php?id=74> (last visited Nov. 29, 2005).

¹⁶⁸ *Id.*; Sun, *supra* note 83, at D1.

¹⁶⁹ UNIVERSAL DECLARATION OF HUMAN RIGHTS, *supra* note 1, pmb1.

¹⁷⁰ China: Now It’s Up to the Olympic Sponsors, June 13, 2001, <http://hrw.org/English/docs/2001/07/13/china121.htm> (last visited Nov. 29, 2005).

¹⁷¹ This page is periodically updated as new sponsors are announced. Marketing Beijing 2008, <http://en.beijing2008.com/52/67/column211716752.shtml> (last visited Nov. 29, 2005).

¹⁷² The World Trade Organization approved China’s bid to join its 142 other government members in Sept. 2001. This was recognized as a defining moment for the WTO and for the international economic, political and security arrangements. Mike Moore, *China’s WTO Deal: A Defining Moment for Global Cooperation*, INTERNATIONAL HERALD TRIBUNE, Sept. 19, 2001, http://www.iht.com/articles/2001/09/19/edmoore_ed2_.php.

membership was decided on the basis of trade considerations and not on its human rights record.¹⁷³ The difference between the accountability of the IOC versus the WTO to reform human rights, however, is the ideals of the Olympic Movement. In contrast to the WTO, the purpose of the IOC is to enforce the Olympic Charter which has fundamental principles to enforce a more peaceful and better world.¹⁷⁴ A country's human rights record need not be used to determine whether it can be a host country, but the IOC must not squander the opportunity to encourage human rights reform from Olympic Games hosts and maintain its commitment to the spirit of the Olympic Games.

VI. CONCLUSION

¶44 The Olympic Games are already used as a symbol of peace, fair competition and international cooperation. As Beijing prepares to host the 2008 Olympic Games, the IOC must seize the opportunity to also utilize the Olympic bid, spirit and Movement to initiate the kind of human rights reform clearly implicated by the Charter and principles. Voluntary human rights reform has been unmotivated by charters or by the use of the Olympic Games as a threatening sanction. Therefore, although it requires trust in the power of civic pride and assumes the Olympic spirit can replace antagonistic enforcement, the Olympic Games can effectively serve as a vehicle for human rights reform. Furthermore, lighting the torch for human rights can commence at the 2008 Beijing Olympic Games and extend to future host countries. Human rights reform initiated by the Olympic Games can first focus on violations directly related to the Games, such as labor rights, evictions or discrimination, but has the potential to motivate reform of international human rights concerns as broad as children's rights or issues of international justice. The use of the Games as a medium to reform human rights in China is just the beginning of how the Games can effectuate political and social change.

¶45 China's self-reflection of its human rights record while in the international spotlight as host of the Olympic Games, coupled with the moral persuasion and authority of the IOC, can reform human rights in China. The prestige of hosting the Olympic Games, the energy of the Olympic spirit and the authority of the Olympic Movement create an opportunity to transform China's human rights record and can be a motivation for positive change in future Olympic host countries.

¹⁷³ *Id.*

¹⁷⁴ Olympic Charter, Fundamental Principles of Olympism, *supra* note 7; *See supra* Part II.A.