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Sport mega-event governance and human rights: the 'Ruggie Principles', responsibility and directions

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ABSTRACT

In recent years, the discourses surrounding human rights and sport mega-events (SMEs) have grown immensely. These are often directed towards sport's governing bodies responsible for the administration of these mega-events. Tapping into the growing scholarship, this article aims to advance the fields of sport, leisure and human rights. By reconsidering the commercial nature of sports' governing bodies (focusing on IOC and FIFA), we argue that what is commonly referred to as the 'Ruggie Principles' both can and should be applied to FIFA and IOC's practices and event-related operations. In this context, and by reflecting on the practical applications of human rights impact assessments in the context of sport governing bodies who are the awarding bodies of hosting rights, the paper argues that due diligence and human rights impact assessments should become an organisational mainstay of FIFA and IOC's event-related operations. Whilst our normative argument can have implications for policy and practice, we also provide further directions for research in what remains a pivotal era of SMEs globally.

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Introduction

The governance of mega-events cuts across diverse leisure-related settings speaking to tourism, sport, leisure facilities, consumption and sport participation. By building on the growing literature on sport mega-events (SMEs) and human rights (Caudwell & McGee, 2018; Horne, 2018; McGillivray et al., 2019, 2022) and the United Nations 'Protect, Respect and Remedy' framework[1] (the 'Ruggie Principles'), this article examines the practical operationalisation of human rights impact assessments (HRIAs) in the context of *Federation Internationale de Football Association's* (FIFA) and the International Olympic Committee's (IOC) SMEs. HRIAs can, following De Beco (2009, p. 140), be 'understood as the assessment of both the potential human rights impact of future policies and the actual human rights impact of implemented policies in a way ensuring the participation of various actors'.

The intersection of *sport* and *human rights* generates several profound and challenging claims. Indeed, emanating from contrasting conceptual and legal paradigms, sport and human rights would appear to have little in common. Supporting such charges are the well-established claims of complicity by sport governing bodies in host nations' human rights abuses. These include allegations of human displacement in the preparation of sporting events (Morel, 2012), the use of forced labour in the construction of the stadia and SME's wider infrastructure, a perceived culture of impunity which sporting bodies appear to adopt when awarding

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SMEs to particular countries (Amnesty International, 2021a; Human Rights Watch, 2020; Millward, 2017; Ruggie, 2015) and the apparent inability of national and international sporting bodies to effectively combat racism (Hylton, 2010) and homophobia within sport (Davidson & McDonald, 2018).

Subsequently, scholars have called for further research on the nexus between SMEs and human rights (Horne, 2018; McGillivray et al., 2019) and specifically this paper builds on McGillivray et al.'s (2019) recent academic and policy-oriented research agenda. We seek to shed light on and fill the research gap related to the *practical* application of HRIAs in the context of sport governing bodies who are the awarding authority for mega-event hosting rights. This article's approach is conceptual and draws upon insights from the sociology of sport, leisure studies, event studies, human rights, socio-legal research and official reports. The two key research questions the article poses are as follows: (1) how can human rights principles become operationalised within the IOC and FIFA in their event-related operations and (2) what are the implications of human rights mainstreaming becoming an operational priority for the aforementioned organisations?

In the context of the 'Ruggie Principles', the paper argues that due diligence and HRIAs should become an organisational mainstay of FIFA and IOC's event-related operations. Borrowing guidance from international human rights bodies, we also provide tentative directions for *how* this could be operationalised, to better ensure that sport's governing bodies apply increased pressure on host countries to abide by their legal responsibilities *vis-à-vis* human rights. We contend that this should be underpinned by a systematic process of human rights mainstreaming, which should occur throughout the entirety of both organisations; throughout an event's life-cycle (McGillivray et al., 2019).

Literature review: governance, commercialism and human rights

Upon proceeding, we remain concerned with the non-governmental organisations of FIFA and IOC. Ultimately, these organisations are responsible for overseeing the FIFA World Cup and the Olympic and Paralympic Games, respectively. Thus, our focus on these organisations may be justified since these are two of the largest, most influential sporting organisations that administer two of the biggest SMEs in the world.

The IOC and FIFA are located in Switzerland and have status as non-governmental non-profit organisations. Thus, although bereft of legal status under international law, they do, however, possess and exert a growing influence on international developments. Nowrot (1999, p. 586) argues that such organisations 'have gained more influence in international relations and are more active in global policymaking than ever before'. FIFA can even be considered one of the largest non-profit organisations in the world (Eick, 2010). Despite this, FIFA and IOC remain characterised by a commercial nature. This is visible not only from their (hyper-)commercial activities but also from their economic profits, although this cannot be shared with its shareholders or members. Other scholars and commentators have pointed towards this earlier, and FIFA and IOC have been subject to extensive academic (Chappelet, 2022; Lenskyj, 2004) and journalistic criticism (Jennings, 2011). Whilst diverse, the critiques of these organisations have related to, *inter alia*, their lack of 'accountability' and 'transparency', allegations of corruption and bribery (Philippou, 2021) and most relevant in this article's context, widespread concerns with regard to human rights abuses (Horne, 2018). In this context, Horne (2018) called for increased awareness and critical approaches towards the hosting of SMEs, which is a call we reflect in this paper.

The commercial nature of the IOC and FIFA must be seen in light of the neoliberal policies that have moulded global sport over the last number of decades. This has turned elite sport into a lucrative industry for investors, sponsors and broadcasters. The Olympics and the World Cup – representing global brands – have, for the two organisations, become key products that generate

enormous amounts of capital, through the sale of sponsorship and broadcasting rights. For instance, the television rights for the 2010 World Cup in South Africa accounted for more than 60% of FIFA's total revenues in the period 2007–2010, where FIFA reportedly earned US$3890 million in event income (Solberg & Gratton, 2014).

Whilst it remains important to underline that the IOC and FIFA remain distinctive organisations, there are similarities with regard to how both have embraced commercialism. Boykoff (2016) provides a political and historical account of the IOC and the Olympic Games. He demonstrates IOC's intensified commercial appetite with regard to broadcasting, sponsorship, commercial partnerships and profit maximisation which he theorises as 'celebration capitalism'. As similar to the World Cup, sponsors of the Olympics pay large fees for the rights to use the Olympic brand and its images, much as a result of the IOC's adaption of capital-oriented commercial and mercantile strategies (Heine, 2018)

It is clear that sport's most influential governing bodies – which award mega-event hosting rights to states – are highly commercialised entities that have a stake in the global marketplace and generate significant revenues from business practices related to sponsorship, broadcasting, licencing, hospitality and match-day revenue at SMEs (Solberg & Gratton, 2014). Yet, one key question that remains is to what extent profits target the human rights issues that emerge around SMEs and their host countries.

For instance, some argue that the organisations have in fact 'shied away from accepting responsibility for monitoring, and acting upon, human rights abuses in the hosting of their main event assets' (McGillivray et al., 2019, p. 178). As stated, the academic literature on human rights/mega-events has grown considerably (Chappelet, 2022; Talbot & Carter, 2018) and, in this context, it was recently argued by McGillivray et al. (2019) that stakeholders thus need to increasingly adhere to the 'Universal Declaration of Human Rights' (UDHR) and the 'United Nations Guiding Principles on Business and Human Rights'. They also mobilise a framework based on good governance; democratic stakeholder participation; formalisation of human rights agendas and sensitive urban development, demonstrating the time and space diffuse nature of the SME's human rights issues (ibid.). By connecting to these assertions, this article seeks to extend such arguments and the wider literature (Horne, 2018; McGillivray et al., 2022) by filling a research gap speaking to the *practical* operationalisation of human rights principles and HRIAs by sport governing bodies.

Revisiting the 'Ruggie Principles'

Promulgated in 2011, the 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (UN Human Rights Council, 2011), commonly referred to as the 'Ruggie Principles', represented the culmination, at the international level, at efforts to navigate and regulate the legal boundaries between the private sector and human rights (Glinski, 2017). Authored by the late John Ruggie, the former Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, the principles developed, amplified and operationalised his earlier work, namely, the United Nations 'Protect, Respect and Remedy' Framework (Buhmann, 2015; United Nations, 2008). This presented 'a conceptual and policy framework to anchor the business and human rights debate' (United Nations, 2008, p. 1) and embraced a tripartite distillation of the duties and responsibilities arising from the business and human rights nexus. These included the 'State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies' (ibid. p. 5). Although legal efforts at the international level are gaining pace in relation to the formulation of an international binding treaty on business and

human rights (United Nations, 2021a), such developments currently remain in draft form and thus the 'Ruggie principles', though non-binding, remain the most authoritative *go-to* guide in relation to the interface of business and human rights.

Having received the imprimatur of the international community, including the UN Human Rights Council (UN Human Rights Council, 2011; United Nations, 2008), and the Organisation for Economic Cooperation and Development (OECD (2011)) they have undoubtedly established themselves as the legal substructure upon which the development of the interface between human rights and the private sector is likely to evolve (Addo, 2014). The 'Ruggie principles' are built on three interrelated pillars, including (1) the state duty to protect human rights, (2) the corporate responsibility to respect human rights and (3) the obligation of states to provide access to a remedy. Noteworthy in that they represent the first time that the UN Human Rights Council (or its predecessor, the Human Rights Commission) have 'endorsed a normative text on any subject that governments did not negotiate themselves' (Ruggie, 2014, p. 5), the principles have since been characterised as, 'the "state of the art"' (Glinski, 2017, p. 16) on the issue of business and human rights and 'the most authoritative statement on the human rights responsibilities of corporations and corresponding state duties adopted at the UN level' (De Schutter, 2014, p. 194). Commentators have also highlighted their ability to 'explicitly connect state law and private regulation' (Buhmann, 2015, p. 401). Extensive in their scope and reach, they 'apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure' (UN Human Rights Council, 2011). Significantly, by their very nature, FIFA and the IOC thus fall squarely within the parameters of the 'Ruggie principles'.

The state duty to protect human rights

The first thematic principle expounded within the 'Ruggie principles' is the rearticulation of the fundamental legal position within international human rights law which assigns primary responsibility to the state to protect human rights. Instituted upon the classical vertical axis which connects both individual and state, human rights law ascribes the customary duties to respect, protect and fulfil human rights with the state as the primary duty-bearer (Eide, 1987). While this fundamental and indeed indisputable reality is well anchored within both the legal and lexical fabric of international and regional human rights law,[2] the ascendancy of the private sector as a powerful and potent actor in global economic, social and political affairs has resulted in a paradigmatic shift which has re-orientated the historical relationship between such actors (Deva & Bilchitz, 2013; United Nations, 2011). While states continue to assume the principal obligation as duty-bearers to enforce and realise their human rights commitments, the increased recognition of the extent to which the private sphere impacts on individual human rights has not only brought into sharp focus their role and reach but also the wider issues of commercial governance, responsibility and legal regulation (Chirwa & Amodu, 2021).

Against this canvas, the 'Ruggie principles' acknowledge that while 'States are not per se responsible for human rights abuses by private actors' (UN, Principle 1), they may nonetheless violate their legal obligations 'where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actor's abuse' (ibid.). From a regional human rights perspective, this approach can be seen from the jurisprudence of the European Court of Human Rights. For example, in the case of *Guerra and Ors. v Italy*,[3] the Court held that Italy violated Article 8 of the European Convention on Human Rights for failing to take the necessary measures to prevent environmental pollution from a chemical factory interfering with the applicant's right to respect for private and family life. Similarly, in *Fadeyeva v Russia*,[4] the Court stated that '[. . .] the State's responsibility in environmental cases may arise from a failure to regulate private industry'.[5] Although such cases emanated from environmental issues, they do nonetheless indicate that the actions of private actors are not immune from state regulatory oversight (Chirwa,

2004). They also demonstrate that the actions of commercial entities – which have implications for both FIFA and the IOC – are neither impervious to, nor immune from, wider human rights considerations.

Momentum at the international level has proliferated in recent years with various international human rights treaty monitoring bodies further outlining the role and responsibilities of the state in regulating the actions of the private sector. For instance, the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights, which oversee the implementation of the UN Convention on the Rights of the Child (1989) and the UN Convention on Economic, Social and Cultural Rights (1966), respectively, have both been unequivocal in their elaboration of the responsibilities which states assume in the regulation of the actions of commercial actors within their jurisdiction. Central to the guidance issued by both bodies has been the reassertion that while the actions of the private sector fall outside the legal axis which typify the human rights obligations of the state towards the individual, states nonetheless are not absolved of ensuring or enacting appropriate legal, regulatory and operational oversight over the activities of the private sector within their jurisdiction. The former body argues that states must prevent private actors from violating children's rights by enacting various measures which include, *inter alia*, 'the passing of law and regulation [. . .] and policy adoption that frame how business enterprises can impact on children's rights' (Unites Nations Committee on the Rights of the Child, 2013, p. 9), while the latter body have argued that states 'adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against . . . rights violations linked to business activities' (United Nations, 2017, p. 5). Therefore, from a human rights perspective, the private sector can no longer take cover behind their non-state character, while the state can no longer turn a blind eye towards the activities of the private sector on account of that character.

Such sentiments are also captured within the 'Ruggie principles', which further contend that states should enact laws and policies which ensure that businesses respect human rights within their jurisdiction (Principle 3), that sufficient steps are taken to ensure that businesses either owned, controlled or supported by the state do not engage in human rights abuses (Principle 4) and that states ensure that business-related policy at governmental level observes and complies with the states human rights obligations. Therefore, while the first pillar of the 'Ruggie principles' reaffirms the long-established legal orthodoxy that the state assumes the primary responsibility in protecting human rights, the legal application of that principle does not operate within a narrow legal paradigm. Rather, the actions of the private sector, including FIFA and the IOC, can activate this duty, if such actions can be either attributable to the state or should the state's inaction prolong or exacerbate the impact of the violative conduct by the private sector on the individual(s) concerned.

The corporate responsibility to protect human rights

It is the second thematic pillar of the 'Ruggie principles' which is explicitly targeted at the business sector and which is of acute relevance in the context of the activities of FIFA and the IOC. Consisting of 14 sub-principles, their aggregate contention revolves around the requirement of the private sector to respect human rights (UN, 2012). In furtherance of this, they expound several important duties. These include the need for businesses to respect human rights (Principle 11), to avoid causing or contributing to adverse human rights impacts through their actions (Principle 13), to engage in human rights due diligence processes to identify, prevent and mitigate against any adverse human rights consequences arising from their business activities (Principles 15 & 17), to embed their adherence to human rights within their policy commitments (Principle 16) and to engage in human rights impact assessments pertaining to their business activities in order to assess the human rights risks associated with their commercial decisions, operations and relationships (Principles 17, 18 & 19).

However, this pillar has not evaded scrutiny. In his assessment of the terminological nuances which demarcate the *duty* of states to comply with human rights as enunciated within pillar one and the *responsibility* of businesses to respect human rights as outlined within pillar two, Wettstein (2015) argues that the practical consequence of this demarcation is twofold in nature. The first is that it 'implies that there is no basis in international human rights law from which to derive corporate human rights responsibilities' (ibid. p. 167), the result of which is anathema to the contested legal space within international human rights law governing the legal duties of the private sector. The second consequence, he argues, revolves around the etymological ambiguity, or terminological confusion or ambivalence, that is generated by distinguishing duties from responsibilities. In the absence of a justificatory basis for the deployment of such a distinction, whereby both standards operate within objectively malleable and discretionary parameters, where the implementation of the respective 'duties' and 'responsibilities' are neither fixed nor identifiable, Wettstein (2015, p. 167) argues that the distinction is 'entirely arbitrary' in nature.

Similarly, McCorquodale (2009, p. 393) argues that the distinction is inherently 'confusing', while in his robust rebuke of the approach taken by the 'Ruggie principles' pertaining to the responsibility of corporations to respect human rights, Bilchitz (2013) cogently maintains that they fail to account for, or give effect to, the legal obligations of third parties, including corporate actors, to comply with binding human rights requirements. Bilchitz (2013) argues that:

> The state can only be required to enforce an obligation that is already recognised – expressly or implicitly – by the international treaties themselves. The logic of the state 'duty to protect' at international law thus necessarily entails the notion that non-state actors, including corporations, in fact have binding legal obligations with respect to the human rights contained in these treaties. (ibid. p. 112)

However, despite the well-founded concerns as outlined by the various scholars above, one of the important and perhaps promising aspects of the 'Ruggie principles' is the recommendation that businesses conduct due diligence and impact assessments in furtherance of assessing the compatibility of their activities with human rights principles (Principles 17–21). Despite being described as 'being at the heart of the Guiding Principles' (Bonnitcha & McCorquodale, 2017, p. 900), concern has nonetheless been expressed regarding the extent to which due diligence and impact assessment requirements can meaningfully be adhered to within a business context. Fasterling and Demuijnck (2013, p. 808) argue that:

> In the light of the potential costs and risks of a proper due diligence endeavour, and taking into account that that existing evaluation processes cannot produce sufficient evidence that allows conclusions about the effectiveness of a corporation's attempt at due diligence, the moral commitment of a corporation or lack thereof becomes a decisive factor for the importance and means that a corporation will attribute to its human rights due diligence process

However, in the context of the activities of both FIFA and the IOC, the adoption of robust and transparent due diligence and impact assessments could potentially yield transformative changes and positively alter the culture of decision-making within both organisations, given that many of their decisions (i.e. host selection) generate serious questions regarding the human rights commitment of both organisations (Horne, 2018).

In simple reductionist terms, impact assessments, including HRIAs, provide an explanatory foundation upon which decisions can ultimately be made and defended. However, their success ultimately depends on several factors such as the time involved in preparing the impact assessment itself and the robustness and extent of stakeholder engagement. As De Beco (2009) argues, HRIAs yield several benefits including increased compliance with human rights standards, greater integration of human rights within policy and decision-making, increased accountability by facilitating participation and enabling empowerment by bringing rights-holders closer to policy development. It is through the identification of the risks, benefits, costs, advantages and disadvantages which attach to a proposed decision, which after careful examination, provides the evidence base upon which the

decision to adopt or reject a particular course of action will be taken. Similarly, in his articulation of the guiding principles on HRIAs of trade and investment agreements, De Schutter (2011) sets out several important transferable elements which comprise such assessments. Among these are the necessity for their methodological design to align with a human rights approach (ibid. Part IV) and the requirement to make explicit reference to the normative content of human rights obligations, including the adoption of human rights indicators, within the assessment model (ibid.: para 5).

Thus, we contend that the inclusion of the due diligence and impact assessment requirements within pillar two of the 'Ruggie' principles contains much potential moving forward to better human rights-proof the activities of both FIFA and IOC, in addition to other sport governing bodies. However, as will be argued below, the success of such exercises will ultimately depend on the extent of the human rights culture within both organisations.

Access to Remedy

The final pillar of the 'Ruggie principles' revolves around the central principle that: 'States must take appropriate steps to ensure, through judicial, administrative, legislative, or other appropriate means, that when such abuses within their territory and/or jurisdiction those affected have access to effective remedy' (Principle 25). This includes both state and non-state mechanisms (Principle 26), the creation and facilitation of non-judicial grievance mechanisms (Principle 27 & 28), and the establishment of a non-judicial grievance procedure which is legitimate, accessible, predictable, equitable, transparent and rights compliant (Principle 31). Permeating the recommendations underpinning access to a remedy is the fundamental recognition that although states bear the primary responsibility for guaranteeing this right of access to a remedy, businesses should 'also establish or participate in effective operational-level grievance mechanisms for individuals and commutates who be adversely impacted' (Principle 29). Additionally, the significance of the right to a remedy in relation to the actions of businesses was comprehensively outlined by the UN Committee on Economic, Social and Cultural Rights who stated in 2017 that: 'States parties must provide appropriate means of redress to aggrieved individuals or groups and ensure corporate accountability' (United Nations, 2017; para 39).

However, the reference within the 'Ruggie principles' to the use of non-judicial grievance mechanisms also raises the issue of alternative dispute resolution (ADR) and the impact which human rights protections can have on ADR processes. Although the 'Ruggie principles' refer to factors such as legitimacy, accessibility, predictability, equity and transparency (Principle 31), they fail to anchor these within specific human rights standards or treaties, the result of which is that they are stripped of important legal certainties and the correlative obligations which they generate. More recently, McGregor et al. (2019) have expressed caution at the increased reliance on ADR from a human rights perspective within a business context. As they highlight:

> Power imbalance between the parties, which is particularly acute in human rights cases, lies at the heart of these concerns. Part of these concerns may relate to the resources that the more powerful party, such as a state or business, may be able to invest in the process. Subtler dynamics of power imbalance may also result in complainants feeling compelled to settle out of concern that they will not be believed in court, regardless of the strength of the case or the evidence (p. 320)

Operationalising the application of Ruggie's due diligence and impact assessment requirements

Having considered the primary features of the 'Ruggie principles', this section now advances three reasons why the practice of due diligence and HRIAs should become an organisational mainstay within the operation of both FIFA and the IOC, and indeed other sport governing bodies more widely.

The rise of human rights discourses within sport

Undoubtedly, engagement with the interface of sport and human rights has proliferated in recent years. Næss (2020, p. 205) argues that the expansion of the spheres of influence of international sports governance bodies is such that they are 'arguably too influential to not be held accountable in some way for their views and actions in respect of social justice'. Indeed, Amis (2017) reminds us in the context of SMEs, which is of relevance to the hosting of sporting events by both FIFA and the IOC, that:

> over the last two decades a recurring pattern of human rights challenges emerges. Ranging from forced evictions, resettlement issues and housing rights abuses during land acquisition and development; to labour rights questions and migrant worker exploitation during venue construction and infrastructure development, as well as in the manufacture of assorted goods (e.g., sporting goods, event merchandise and food products) and services (e.g., hospitality and catering) (p. 137)

While the adverse human rights consequences which have blighted SMEs have been well recounted, such as the exploitation and high death rate of migrant workers associated with the 2022 Qatar World Cup preparations (Millward, 2017), or the incontrovertible evidence obtained by Human Rights Watch (2020) which highlights that such workers have endured wage abuse and wider economic and physical exploitation, little parallel evidence has emerged of the tangible steps taken by FIFA to ensure that Qatar ceases such practices (Amnesty International, 2021b). Similarly, the hosting of the 2022 Winter Olympics in Beijing raised a number of profound human rights concerns (Human Rights Watch, 2022), in view of the ongoing targeting and suppression of ethnic minorities and human rights defenders, the ongoing elimination of freedom of expression rights and the curtailment of LGBTI rights, among others, within China (Amnesty International, 2021b). Likewise, little tangible action has been undertaken by the IOC to ensure China abides by their human rights commitments. This is not to suggest, of course, that the role of sport governing bodies is to hold state's legally accountable for their human rights abuses. Rather, it serves as a reminder moving forward that sport governing bodies should give more concrete effect to human rights considerations within their decision-making processes regarding the awarding of lucrative hosting rights to specific countries. Therefore, we argue that the integration of due diligence and human rights impact assessments within such processes offers a more robust pre-emptive method by which human rights considerations can be operationally foregrounded.

Given that FIFA and the IOC are content to outwardly convey their adherence to human rights standards, the adoption of due diligence and HRIAs should follow naturally from such actions. The most recent, 2021 iteration, of the Olympic Charter proclaims that Olympism is based on 'social responsibility and respect for universal fundamental ethical principles' (IOC, 2021, Principle 1), that it is aimed at engendering 'a peaceful society concerned with the preservation of human dignity' (ibid. Principle 2), whilst also maintaining that: 'The practice of sport is a human right' (ibid.) and that the rights and freedoms set forth within the Charter 'shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status' (ibid. Principle 6). Similarly, in their recent articulation for their future vision, FIFA (2021) reasserted their commitment to protecting human rights which included the creation in 2020 of a human rights and anti-discrimination department. This followed an examination in 2015 – by John Ruggie – of the manner in which FIFA could embed human rights within its global operations (Ruggie, 2016). In setting out 25 recommendations, Ruggie argued that FIFA should, among other actions, adopt a clear human rights policy, embed human rights within its operations, assess the human rights risks associated within its activities and ensure that appropriate remedies are available. This is further reflected with the 2021 FIFA statues wherein General Provision 3 states: 'FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights' (FIFA, 2021). Similarly, the 2020 recommendations for the development of an IOC Human Rights Strategy (Al Hussein & Davis, 2020) stated that the 'Ruggie principles' were 'the

logical reference point for clarifying the IOC's responsibility and developing a strategy to put this into action' (2020, p. 11). The recommendations advanced therein included the articulation of IOC's human rights responsibilities, embedding respect for human rights across the organisation, identifying and addressing human rights risks, tracking and communicating on progress and strengthening the remedy ecosystem in sports (pp. 24–40).

While an increased awareness of the need to respect and embed human rights within both organisations has undoubtedly galvanised their operational and strategic visions moving forward, the question now remains as to how best to ensure that such outward expressions of intent are realised in practice and not simply reduced to illusory objectives. Therefore, this article argues that operationalising the due diligence and HRIA requirements within the 'Ruggie principles' provides a mechanism to translate such operational intent into an achievable and durable reality.

Procedural legitimacy

It is argued here that adherence to the 'Ruggie principles' and particularly the way FIFA and IOC engage in human rights due diligence and impact assessments can bring an enhanced procedural legitimacy to the decision-making processes, and outcomes, of both organisations. In recent years, several ethical and legal controversies have emerged which directly challenge the commitment of both FIFA and the IOC to human rights. For example, in the competitive selection process of mega-event host countries/cities, it is observable that FIFA and IOC have awarded the rights to host, respectively, the World Cup and Olympics to countries with questionable human rights records. This includes, *inter alia*, Qatar's 2022 World Cup, and Beijing's 2008 Summer Olympics and 2022 Winter Olympics (Chappelet, 2022). Questions were also asked of IOC's selection of Sochi, Russia, as the host of the 2014 Winter Olympics given the collapse of LGBT rights within that country (Dowse & Fletcher, 2018).

Philippou (2021) notes that SMEs are regularly accompanied by allegations of bribery and corruption. Following Jennings (2011, p. 338), this is much due to the lack of transparency within FIFA and the IOC which 'goes hand in glove with a propensity for corruption'. Looking back over the Olympic history, the 2002 Winter Olympic bid scandal – which emerged in 1998 – serves as a powerful illustrator of this. In this case, several IOC members were bribed with gifts, university scholarships and money from Salt Lake City representatives in exchange for their votes on Salt Lake City's Olympic bid. In the aftermath of the scandal, IOC set up a new Ethics Commission with four IOC members and five outsiders (Boykoff, 2016, pp. 151–154). More recently, the head of the Brazilian Olympic Committee was sentenced to more than 30-year imprisonment for bribery and corruption offences in relation to securing the 2016 Rio de Janeiro Olympics (The Guardian, 2021). Indeed, recent litigation in the USA has further uncovered a culture of bribery, corruption and organisational dishonesty at the very top level within FIFA (US Department of Justice, 2015), the result of which undoubtedly exerts immense reputational damage on the organisation.

However, in returning to pillar two of the 'Ruggie Principles', the recommendation for organisations to engage in due diligence and impact assessments could yield transformative results for both FIFA and the IOC and engender a genuine organisational commitment to human rights. Writing prior to the formulation of the 'Ruggie principles' themselves, Ruggie (2009, para 71) stated that due diligence is tantamount to a 'comprehensive, proactive attempt to uncover human rights risks, actual and potential, over the entire life cycle of a project or business activity, with the aim of avoiding and mitigating those risks', while the UN recently stated that the obligations arising from due diligence requirements, are 'likely the most influential contribution of the Guiding Principles' (United Nations, 2021a, p. 5). Indeed, in the context of FIFA's commitment to human rights, Ruggie (2016, p. 12) has previously stated that they should have an 'ongoing process of human rights due diligence through which the enterprise assesses risks to human rights, integrates the findings into its decision-making and actions in order to mitigate the risks, tracks the effectiveness of these measures, and communicates its efforts

internally and externally'. Similarly, in their recommendations to the IOC, Al Hussein and Davis (2020, p. 15) argue that the integration of human rights due diligence processes 'would significantly enhance the organization's ability to handle a wide range of existing human rights issues, as well as future ones, by regularizing the way in which human rights risks are identified, mitigated, monitored and communicated about, in line with international human rights standards'.

However, the question naturally arises as to what constitutes a due diligence or HRIA and how sport governance bodies should carry them out. While no singular or definitive approach exists in policy and practice which underpins the delivery of either due diligence assessments, or indeed, impact assessments, they do, however, exhibit some core unifying features. From a business perspective, which includes both FIFA and the IOC, this would embrace an attempt to adopt a proportionate and informed approach to undertaking, adopting or regulating a particular area of business activity based on accurate evidence, with relevant stakeholders permitted to contribute to the debate, and all costs and benefits of the proposed activity assessed in detail. This would also necessitate a rigorous assessment of the human rights implications of the proposed decision(s). In their guidance, the OECD states that due diligence is inherently a preventative exercise in that seeks 'to avoid causing or contributing to adverse impacts on people, the environment and society, and to seek to prevent adverse impacts directly linked to operations, products or services through business relationships' (OECD, 2018, p. 16). They further state that due diligence 'should be an integral part of enterprise decision-making and risk management' (ibid.) and that engagement with stakeholders and those likely to be affected by business decisions should be consulted (ibid.).

Yet, while the theoretical underpinnings of due diligence and human rights impact assessments within a business context are well established, their practical operationalisation, crucially, remains somewhat under-developed. Numerous questions abound: how are they implemented in practice? Who retains responsibility for their implementation and what are the considerations and procedures that should inform their execution? Therefore, the goal of embedding such practices within the private sector, including sport governing bodies, remains a clear priority for the future rights-proofing of the activities of both FIFA and the IOC.

However, guidance from various international human rights bodies does shed some light on what could and should be included within such assessments. According to the Danish Institute for Human Rights (2020), five overarching phases should underpin this process. These include, firstly, the planning and scoping phase which would include setting out the terms of reference of the impact assessment and planning for its implementation. The second phase includes data collection and baseline development whereby all relevant data are collected using relevant human rights standards and indicators and underpinned by stakeholder engagement. The third phase involves an assessment of the projected impact of the activity on human rights and an analysis of the severity of such impacts. The fourth phase revolves around impact mitigation and management, which includes effective monitoring, the provision of remedies and the proposal of measures to reduce the human rights impact of the decision in question. The final phase involves the reporting and evaluation of the impact assessment by making available in a clear and accessible format the methods and process which underpinned the assessment in the first instance and the findings which were generated as part of that process.

Similar guidance issued by Harrison and Stephenson (2010) – while instituted on eight phases – also revolves around the same fundamental requirements of screening, scoping, evidence gathering, consultation, analysis, conclusion, publication and monitoring. Indeed, in her examination of the 'several recurring elements in the literature and guidance' (Gotzmann, 2017, p. 92) pertaining to HRIAs, Gotzmann outlines five core features which unify the practice. These include, *inter alia*, the use of international human rights law as the framework against which to conduct the assessment in the first instance, the consideration of the actual and potential human rights effects of the proposed decision, the adoption of a human-rights-based approach to the assessment to include an inclusive

and participatory process, the need to ensure accountability, including the provision of remedies and the establishment of mechanisms to address the severity of the eventual impacts of the proposals.

In sum, operationalising due diligence and HRIA requirements involves a comprehensive understanding of international human rights law of all classifications; civil, political, economic, social and cultural, and the procedural and substantive obligations which flow from those rights (Wettstein, 2022; World Bank, 2013). While undoubtedly a commitment to such processes would bring a procedural legitimacy to the decision-making structures and outcomes of sport governing bodies, including FIFA and the IOC, in that prospective decisions would, at least theoretically, be anchored within an appreciation of human rights, the practical issue of embedding those considerations becomes a critical concern.

In other words, if respect for human rights is to become the normative axis around which decisions pertaining to the commercial practices of both FIFA and the IOC are to revolve around, then the extent to which they are institutionally equipped to assimilate HRIAs within their due diligence processes becomes an immediate concern. In this regard, outward manifestations of adherence to human rights do little to alter cultural and institutional practices within any organisation, including FIFA or the IOC. As the next section demonstrates, what is required now within both organisations is the commencement of human rights mainstreaming to attain the organisational probity that Ruggie ultimately envisages within his Guiding Principles.

Organisational probity

To ensure that both FIFA and the IOC, and other sport governing bodies more widely, are institutionally equipped to ensure their organisational probity in furtherance of their due diligence and impact assessment requirements, it is suggested that such organisations engage in a human rights mainstreaming operation. Described as the 'conscious, systematic and concrete integration of certain values and standards into policies, plans, programmes, priorities, processes and results of the work of an organisation' (Yeshanew, 2014) the concept of mainstreaming has gathered increased national[6] and international prominence since the 1997 communiqué issued by the then UN Secretary-General Kofi Annan, wherein he identified and designated human rights as a 'cross-cutting' issue for the UN and its agencies and departments thereunder (United Nations General Assembly, 1997). Since then, human rights 'mainstreaming' has become a powerful tool within the operational framework of the UN and indeed wider intergovernmental and regional organisations[7] as a means of integrating human rights into their governance and productivity structures (Fujita, 2011). It effectively operates as an overarching objective in which the primary aim is to better rights-proof the actions and decisions of a particular organisation or institution.

However, human rights mainstreaming generates several practical and operational issues. Yeshanew (2014, p. 380) argues that it 'is about the implementation of a certain policy through the instrumentality of all branches of an organisation', and that the human rights that are to be mainstreamed should be integrated into the work of the organisation at all levels, international, regional and national. This is particularly pertinent for both FIFA and the IOC who operate within these multi-layered levels. And although the 'Ruggie principles', (and indeed the 2016 Ruggie FIFA recommendations and the 2020 IOC recommendations) are silent on the matter of mainstreaming, it is contended that to implement due process and impact assessment processes within both organisations, mainstreaming must and should occur. Indeed, it is axiomatic that human rights mainstreaming is an inseparable aspect of due diligence and HRIAs in the first instance, as without it the quality of any such exercises would be inherently diminished. Indeed, Oberleitner (2008) argues that for mainstreaming to effectively happen, several practical events must occur. This includes the provision of human rights training to staff, altering the infrastructural and bureaucratic

practices within the organisation itself so that human rights are a central consideration, and acquiring and developing human rights expertise in implementing, monitoring and evaluating programmes within the organisation.

Although the 'Ruggie Principles' do not engage with human rights mainstreaming, it is argued that to satisfactorily comply with the corporate duty to respect human rights, and particularly the due diligence and impact assessment requirements which are fundamental to that duty, human rights mainstreaming be initiated within both FIFA and the IOC. To do so, however, requires training, investment and human rights capacity-building across all levels of governance within both organisations and a sincere institutional commitment to alter cultural practices within both organisations. It could be suggested that this would contribute to the development of organisational probity within both governing bodies and signal a genuine commitment to the integration of the 'Ruggie principles', and human rights more widely, within their commercial activities.

Whilst the establishment of a human rights and anti-discrimination unit within FIFA (FIFA, 2020), and a similar unit within the IOC (in 2021) is to be welcomed, human rights mainstreaming traverses the entire organisation and concerns the infusion of human rights standards into the work of an organisation internally, as well as its partners (Yeshanew, 2014). Thus, to ensure that the full benefit of HRIAs can exert the fullest traction possible on the activities and decision-making processes of both FIFA and the IOC, it is suggested they initiate mainstreaming systems within their organisations. As McCrudden (2004, p. 7) maintains, human rights mainstreaming is 'intended to be anticipatory, rather than essentially remedial [. . .] It aims to complement existing approaches to compliance, rather than replace them'.

Conclusion

This article has examined the relationship between sport governing bodies, SMEs and human rights. As argued, the application of the 'Ruggie Principles' provides a mechanism through which due diligence and HRIAs could become an organisational mainstay of sport governing bodies' event-related operations. Whilst such an argument is normative, we contend that it simultaneously provides *one* pathway for the facilitation of an increasingly human rights compliant culture within these organisations which again cut across football (FIFA) or multiple leisure and sport settings (IOC) given the global nature of the events which they award to states. To further give effect to this potential, we argue that human rights mainstreaming must become a central operational priority for both organisations. Recently, Horne (2018, p. 18) discussed the denials of human rights abuses at SMEs and asserted that he 'welcome[d] the growing awareness of the risks involved with, and the developing critical stance towards, hosting sports mega-events'. Despite such developments, Horne (2018, p. 18, emphasis added) also reminds us that: 'It would be wrong to think that this is the end of the struggle over human rights abuses [at SMES]. *Rather it is better to see it as the next chapter in the struggle*'.

Consequently, the contributions of this article are threefold. First, with its application of the obligations deriving from the 'Ruggie Principles' to contemporary SME governance, this article has developed a way that due diligence and impact assessment requirements thereunder can be operationalised within FIFA and the IOC. By recommending the adoption of systematic human rights mainstreaming within both organisations, the danger of due diligence or impact assessment exercises becoming a tokenistic exercise can be avoided. Second, this article extends the existing inter-disciplinary sociological and leisure-focused literature on human rights and SMEs. Lastly, this article attends to McGillivray et al.'s (2019) call for research, as we reflect on the practical application of human rights principles in sport.

The relationship between SMEs and human rights will continue to dominate public and academic debates in the coming years. Therefore, we encourage researchers to, first, explore how human rights abuses in relation to mega-events are actively resisted by activist groups, NGOs and athletes. Second, we suggest that the ongoing commitment of FIFA and the IOC, and indeed other sport governing bodies, to human rights, is further examined in terms of how this commitment

manifests in practice, and how such organisations engage in human rights due diligence and impact assessments. Arguably, it is by carefully examining such practices that any organisational deficiencies can be uncovered and reformed.

Endnotes

1. Ruggie, J. 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework'. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
2. E.g. Article 1 of the European Convention on Human Rights and Fundamental Freedoms mandates that the 'High Contracting Parties' to the Convention secure the rights and freedoms therein to everyone within their jurisdiction.
3. Application No. 14,967/85 (1998) 26 EHRR 357.
4. Judgement of 9 June 2005.
5. Ibid. para 89.
6. From a UK perspective, see section 75 Northern Ireland Act and section 19, Human Rights Act 1998.
7. From an EU perspective, the Treaty of Amsterdam (1997) amended the Treaty of European Union (TEU) by promoting gender equality between men and women (Art 3(2)).

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