

FIGHT THE FIG: DUE PROCESS IN INTERNATIONAL SPORT GOVERNANCE

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I. INTRODUCTION

The Olympic Games are made possible by the International Olympic Committee (“IOC”), an international non-government organization that governs over international sports federations that, in turn, governs the sport for which it is named. Both the IOC and the international federations have self-created, self-governing laws.¹ The IOC’s laws govern itself and all entities that are part of the Olympic Games.² The Global Association of International Sports Federations (“GAISF”)³ is another organization, separate and independent of the IOC, but is also comprised of independent international sports federations and other organizations that “contribut[e] to sport[s] in various fields[,]” organize “multi-sports events[,] and supports the organisation of” international, multi-sports events by its members.⁴ GAISF also has its own self-governing laws.⁵

The Court of Arbitration for Sport (“CAS”) is a private, non-government “arbitral tribunal that handles both commercial matters related to sports in the first instance and also serves as an appellate body,”⁶ thus offering services for “the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adopted to the specific needs of the sports world.”⁷ When hearing a dispute, CAS may use governing statutes created by the IOC, GAISF, or the international federations involved in the dispute.⁸ Upon resolution of a dispute, CAS issues an arbitration award which “resolves the subject dispute, orders

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¹ INT’L OLYMPIC COMM., OLYMPIC CHARTER 16-17 (2017), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf> [hereinafter “OLYMPIC CHARTER”].

² *Id.* at 56, 86.

³ GLOBAL ASSOCIATION OF INTERNATIONAL SPORTS FEDERATIONS, STATUTES 1 (2017) <http://oomfjgjh.preview.infomaniak.website/wp-content/uploads/sportaccord-statutes-2017-eng.pdf> [hereinafter “GAISF Statutes”]. The Global Association of International Sports Federations was previously known as SportAccord.

⁴ *Id.* at 4.

⁵ *Id.* at 12-13.

⁶ Horacio A. Grigera Naón and Paul E. Mason, International Commercial Arbitration Practice: 21st Century Perspectives § 40.01 (LexisNexis Matthew Bender).

⁷ *Frequently Asked Questions*, COURT OF ARBITRATION FOR SPORT, <https://www.tas-cas.org/en/general-information/frequently-asked-questions.html> (last visited Feb. 2, 2019).

⁸ *See e.g.*, Paolo Barelli v. Fédération Internationale de Natation (FINA), CAS 2016/A/4924 & 4943, ¶ 51 (2016), <http://jurisprudence.tas-cas.org/Shared%20Documents/4924,%204943.pdf> (applying the rules and regulations of the Fédération Internationale de Natation to determine whether the Appellant had standing on the dispute).

appropriate relief, and is final and binding on the parties.”⁹ “CAS arbitration awards are creating a uniform body of Olympic and international sports law, a so-called *lex sportiva*[.]”¹⁰

This comment argues that IOC and GAISF should revise their governing statutes to provide for due process mechanisms and increased transparency in their operations. Part I describes the hierarchy and functions of international sports government. It also describes the potential issues that a non-IOC regulated sports community may experience when an IOC-regulated governing body tries to govern over the sports community. Specifically, this comment describes how the parkour community has responded to an attempt by the international governing body for gymnastics to govern over parkour.

Part II analyzes the problems resulting from this kind of conduct. These problems include the contradictory statement made by sports governing organizations to become more transparent while not disclosing its decision-making processes or their criteria, the absence of due process guarantees coupled with limited availability of judicial relief, and the absence of rules and guidance where several organizations want to govern a sport. Part II then describes how these problems can be addressed by revising the existing governing statutes to improve transparency and provide for due process and involvement opportunities for entities not formally recognized by major international sports governance entities that may be affected by decisions made by major international sports governing entities.

II. BACKGROUND

The Olympic Games are managed by the IOC, a private, non-government organization so influential that in 2016, the United Nations resolution “reaffirmed the recognition of the autonomy of the [IOC] and the role of sport as an ‘important enabler’ of peace[.]”¹¹ “Participation in the Olympic Games is voluntary. Thus, nations and individuals [participating] in the Olympic Games submit themselves to the rules and regulations established by the IOC[.]”¹²

A. Governance Over the Olympic Games

⁹ Matthew J. Mitten, *Resolving Disputes in Olympic and International Sports*, 16 INSIGHTS ON L. & SOC’Y 12, 15 (2016).

¹⁰ *Id.*

¹¹ INT’L OLYMPIC COMM., IOC ANNUAL REPORT 2016 4 (2017), <https://www.olympic.org/documents/ioc-annual-report>.

¹² David J. Ettlinger, *The Legal Status of the International Olympic Committee*, 4 PACE Y.B. INT’L L. 97, 104 (1992), citing James A.R. Nafziger, *foreword* to Barbara O’Neill, *International Sports: Have States Succeeded Athletes as the Players?*, 6 DICK. J. INT’L L. 403, 424 (1988) (footnotes omitted).

The Olympic Games are one part of a set of actions called the Olympic Movement. The Olympic Movement “is the concerted, organized, universal and permanent action” executed under IOC’s authority.¹³ The IOC, National Olympic Committees, and international federations¹⁴ are the three main constituents of the Olympic Movement.¹⁵ The Olympic Charter is the codification of laws that governs all the constituents.¹⁶ It includes “the Fundamental Principles of Olympism, Rules, and Bye-laws adopted by the [IOC].”¹⁷ All organizations “belonging in any capacity . . . to the Olympic Movement [are] bound by the . . . Olympic Charter and shall abide by” the IOC’s decisions.¹⁸

The Olympic Charter defines the “reciprocal rights and obligations of the three main constituents.”¹⁹ It also describes various measures the IOC may use²⁰ if a constituent violates the Olympic Charter, the Olympic Movement Code, or any other regulation.²¹ For example, the Olympic Charter authorizes the IOC to withdraw a discipline or an event from the Olympic Games if an international federation violates a regulation.²² The Olympic Charter, through the requirement that international federations adopt the World Anti-Doping Code, may also ban individuals from participating in Olympic Games.²³

i. The International Olympic Committee

The IOC is the ultimate authority of the Olympic Movement.²⁴ Under the Olympic Charter, decisions made by the IOC are final.²⁵ Any dispute over the IOC’s “application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport.”²⁶ The Olympic Charter authorizes the IOC to, among other things, recognize (1) an activity as a sport,²⁷ and (2)

¹³ OLYMPIC CHARTER, *supra* note 1, at 11.

¹⁴ See e.g., *id.* at 15, 55. “International federation” and “international sports federation” are used interchangeably.

¹⁵ Mitten, *supra* note 9, at 12; Other constituents of the Olympic Movement, include “national associations, clubs[,] and institutions recognized by the IOC.” See also OLYMPIC CHARTER, *supra* note 1, at 15-16. Athletes “belonging in any capacity whatsoever to the Olympic Movement” are also part of the Olympic Movement.

¹⁶ OLYMPIC CHARTER, *supra* note 1, at 9.

¹⁷ *Id.*

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 99.

²¹ *Id.* Other regulations include the World Anti-Doping Code.

²² OLYMPIC CHARTER, *supra* note 1, at 100.

²³ WORLD ANTI-DOPING AGENCY, *World Anti-Doping Code* § 10.12.1 2015 75-76 (2017), https://www.wada-ama.org/sites/default/files/resources/files/wada_anti-doping_code_2018_english_final.pdf.

²⁴ Mitten, *supra* note 9, at 12.

²⁵ OLYMPIC CHARTER, *supra* note 1, at 103.

²⁶ *Id.*

²⁷ Ettinger, *supra* note 12, at 99-100. (“IOC’s responsibilities also include choosing the host cities for the Games and ensuring that the selected host city follows the rules of the

international federations that govern a sport and disciplines of that sport.²⁸ The IOC is also tasked with “encourag[ing] and support[ing] the promotion of ethics and good governance in sport.”²⁹ The “general meeting of the members of the IOC” is called the Session.³⁰

ii. International Federations

International federations are non-government organizations³¹ that take part in organizing various activities of the sport for which they are named at an international level. For example, an international federation may make and enforce rules for the sport and disciplines within the sport that it governs.³² While IOC recognizes various organizations as the international authority governing a sport,³³ an organization need not be recognized by the IOC to be an international federation.³⁴ The World Skateboarding Federation is an example of an international federation that is not recognized by the IOC but participates in organizing and facilitating skateboarding activities by, among other things, “assist[ing] in building quality skateparks” and “creat[ing] a centralized judging and scoring system[.]”³⁵

A discipline is “[a]ny of the sports and/or activities defined” in a sport.³⁶ For example, the international federation for gymnastics manages at least six disciplines: “Men’s Artistic Gymnastics, Women’s Artistic Gymnastics, Rhythmic Gymnastics, Trampoline Gymnastics, Acrobatic Gymnastics and Aerobic Gymnastics[.]”³⁷ An international federation’s rules extensively regulate the sport. Regulations may, for example, expressly determine which companies may furnish the equipment for use at the Olympic Games.³⁸ Regulations can also establish appeals processes for

Olympic Charter; recognizing and supporting the National Olympic Committees' (NOCs) and International Federations' (IFs) respective rights; determining new IOC members; and negotiating television rights.”)

²⁸ *Id.*

²⁹ OLYMPIC CHARTER, *supra* note 1, at 16.

³⁰ *Id.* at 42.

³¹ *Id.* at 55.

³² Other responsibilities of international federations include maintaining integrity of their sport on the international level and to ensure “the development of their sports throughout the world.” *Id.* at 56; *see also* INT’L OLYMPIC COMM., *International Sports Federations*, OLYMPIC GAMES, <https://www.olympic.org/ioc-governance-international-sports-federations> (last accessed Oct. 13, 2017) [hereinafter “IOC Federations”].

³³ IOC Federations, *supra* note 32.

³⁴ *Id.*

³⁵ *About: Mission Statement*, WORLD SKATEBOARDING FEDERATION, <http://worldskateboardingfederation.org/about/> (last visited Feb. 3, 2019).

³⁶ *Statutes*, FÉDÉRATION INTERNATIONALE DE GYMNASTIQUE 4 (2017) [hereinafter “FIG Statutes”]. Both the Olympic Charter and the Global Association of International Sports Federations’ Statutes mention “discipline,” but do not define it. *See generally* OLYMPIC CHARTER, *supra* note 1; GAISF, *supra* note 3, at 6, 7.

³⁷ FIG Statutes, *supra* note 36, at 27.

³⁸ OLYMPIC CHARTER, *supra* note 1, at 87.

technical matters of a sport.³⁹ Rules created by the IOC-recognized international federation extend “by reference to those organizations recognized by the international . . . federations as governing such sports at the national level.”⁴⁰ Thus, IOC-recognized international federations are responsible for managing and monitoring the “everyday running of the world’s various sports disciplines, including for those on the [Olympic Games] program[.]”⁴¹

IOC-recognized international federations “maintain[] [their] independence and autonomy in the governance of [their] sport[s].”⁴² Thus, IOC-recognized international federations and sports activities governed by such international federations are regulated by their own international federation-specific statutes.⁴³ These statutes must be consistent with the Olympic Charter.⁴⁴

iii. National Olympic Committees

National Olympic committees are national level, non-government sports organizations recognized by the IOC as “authority for the representation of their respective countries at the Olympic Games and at the regional, continental, and world multi-sports competitions patronized by the IOC.”⁴⁵ National Olympic committees are responsible for the development, promotion, and protection of the Olympic Movement in their own countries.⁴⁶ One of their responsibilities is to recognize a single national sports organization as a national federation for a sport governed by the respective IOC-recognized international federation.⁴⁷

iv. National Federations

National federations, also known as national sports federations, are non-government organizations that “govern[] and administer [a] sport” at the national level in addition to the Olympic Committee administering sports at the “world level.”⁴⁸ Any national federation recognized by a national Olympic committee is additionally affiliated with the IOC-recognized international federation that administers the sport that they represent.⁴⁹ For example, USA Gymnastics is the national federation for

³⁹ *See id.* at 88 (defining more examples of subjects regulated by an international sports federation, including “characteristics of the required technical installations and the sports equipment to be used at the venues during the Olympic Games.”).

⁴⁰ *Id.* at 55.

⁴¹ IOC Federations, *supra* note 32.

⁴² OLYMPIC CHARTER, *supra* note 1, at 55.

⁴³ *See id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 60.

⁴⁶ *Id.* at 59, 63, 66.

⁴⁷ *Id.* at 63.

⁴⁸ *Sports Councils’ Recognition Policy*, UK SPORT 2.6 (2017) <https://www.sportengland.org/media/12132/uk-recognition-policy-2017.pdf>; *see also* IOC Federations, *supra* note 32; OLYMPIC CHARTER, *supra* note 1, at 66.

⁴⁹ *See* OLYMPIC CHARTER, *supra* note 1, at 66.

gymnastics recognized by the United States National Olympic committee,⁵⁰ and thus is governed by the statutes created by the Federation of International Gymnastics (“FIG”).⁵¹ Like international federations, an organization need not be recognized by a national Olympic committee to be a national federation.⁵²

To be recognized by the IOC as a member of a national Olympic committee, an organization must “exercise a specific, real and on-going sports activity, be affiliated to an [international federation] recognized by the IOC and be governed by and comply in all aspects with both the Olympic Charter and the rules of its [international federation].”⁵³

v. Court of Arbitration for Sport (“CAS”)

CAS, despite its name, is not a court of law,⁵⁴ but instead is an international arbitral tribunal formed by the IOC “to resolve Olympic and international sports legal disputes by arbitration before an independent and impartial body.”⁵⁵ CAS was established in 1983⁵⁶ by the then-President of the IOC Juan Antonio Samaranch and an International Court of Justice

⁵⁰ *About USA Gymnastics*, USA GYMNASTICS,

https://usagym.org/pages/aboutus/pages/about_usag.html (last visited Nov. 26, 2017).

⁵¹ *About the FIG*, FEDERATION INTERNATIONALE DE GYMNASTIQUE,

<http://www.gymnastics.sport/site/about.php> (last visited Nov. 26, 2017).

⁵² For example, the Australian Parkour Association is a “nationally recognised organisation” that aims to “primarily act as the pre-eminent organization for the development of Parkour in Australia.” Australian Parkour Association, *About the Australian Parkour Association*, AUSTRALIAN PARKOUR ASSOCIATION, <https://parkour.asn.au/about/> (last accessed Feb. 3, 2019).

⁵³ OLYMPIC CHARTER, *supra* note 1, at 66.

⁵⁴ Ken Foster, *Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport's Jurisprudence*, 3 ENTMT & SPORTS L. J. 1, 11 (2005) (“[CAS] is not a fully-fledged judicial procedure that replaces national courts. Neither is it an international court, such as the International Criminal Court, because that would need national governments to have established it by treaty.”)

⁵⁵ Mitten, *supra* note 9, at 12. CAS’ independence was questioned in a proceeding in Switzerland’s highest court, the Swiss Federal Tribunal. Westlaw, *Swiss Federal Tribunal*, UK PRACTICE LAW, <https://uk.practicallaw.thomsonreuters.com/7-523-9007> (last accessed Nov. 2, 2017). CAS was later restructured to have a separate governing body “empowered with administrative functions [and the] responsibility for amending the Court of Arbitration for Sport procedural rules.” Louise Reilly, *An Introduction to the Court of Arbitration for Sport (Court of Arbitration for Sport) & the Role of National Courts in International Sports Disputes*, 2012 J. DISP. RESOL. 63, 64 (2012). The Swiss Federal Tribunal later acknowledged CAS’ independence from the IOC in a later proceeding in which two cross-country skiers challenged the IOC and the International Ski Federation. *Id.* The Swiss Federal Tribunal referred to CAS as the “true Supreme Court of world sport” and that CAS “offered all guarantees of independence and impartiality.” *Id.* (citing Tribunal fédéral [TF] [Swiss Federal Tribunal] Mar. 15, 1993, Arrêts du Tribunal Fédéral Suisse [ATF] 119 271 (Switz.), translated into English in MATTHIEU REEB, DIGEST OF COURT OF ARBITRATION FOR SPORT AWARDS 1, 1986-1998 545 (2001)).

⁵⁶ *History of the Court of Arbitration for Sport*, COURT OF ARBITRATION FOR SPORT, <http://www.tas-cas.org/en/general-information/history-of-the-cas.html> (last accessed Oct. 17, 2017). Although other sources state Court of Arbitration for Sport was established in 1984. *See e.g.*, Reilly, *supra* note 55, at 63.

judge, Kéba Mbave,⁵⁷ after Samaranch recognized a “need to create a specialised authority capable of settling international disputes[.]”⁵⁸ CAS thus “provides a forum for the world’s athletes and sports federations”⁵⁹ and offers an alternative to a court by providing “a flexible, quick and inexpensive procedure”⁶⁰ that “resolv[es] disputes arising in the context of sport by arbitration and/or mediation.”⁶¹ With few exceptions, all international federations recognize CAS “as the final instance of appeal for international disputes, to the exclusion of national courts.”⁶²

Individuals such as athletes as well as organizations belonging to national federations or international federations may⁶³ file “appeals against the decision of a federation, association, or sports-related body” only if the statutes or regulations of the federation, association, or sports-related body provide them.⁶⁴ Alternatively, appellants may appeal to the extent that the parties involved have a specific arbitration agreement and “if the [a]ppellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.”⁶⁵ In short, for CAS to have jurisdiction over a dispute, both parties must have agreed to arbitration in some way.⁶⁶ For example, CAS has been recognized by Swiss courts as “an independent and impartial arbitration system[.]”⁶⁷ CAS decisions are appealable to the Swiss Federal Tribunal.⁶⁸

B. GAISF

GAISF is a “not-for profit association, composed of the autonomous and independent international sports federations and other international organisations contributing to sport in various fields.”⁶⁹ Independent from the Olympic Movement, GAISF works “to organise . . . multi-sports events and support the organisation of multi-sports games by

⁵⁷ Reilly, *supra* note 55, at 63.

⁵⁸ *History of the Court of Arbitration for Sport*, *supra* note 56.

⁵⁹ Mitten, *supra* note 9, at 12.

⁶⁰ *History of the Court of Arbitration for Sport*, *supra* note 56.

⁶¹ *Statutes of ICAS and Court of Arbitration for Sport*, COURT OF ARBITRATION FOR SPORT ¶ C.1.S12 (2017) http://www.tas-cas.org/fileadmin/user_upload/Code_2017_FINAL__en_.pdf (2017).

⁶² Court of Arbitration for Sport lacks jurisdiction over “North American profession sports leagues, which operate their own form of arbitration.” Reilly, *supra* note 55, at 67.

⁶³ Mitten, *supra* note 9, at 12.

⁶⁴ Reilly, *supra* note 55, at 66.

⁶⁵ *Id.*

⁶⁶ *History of the Court of Arbitration for Sport*, *supra* note 56.

⁶⁷ Foster, *supra* note 54, citing *A & B v IOC*, judgment of 27 May 2003, 1st Civil Chamber, Swiss Federal Tribunal (concluding that by bringing their case before Court of Arbitration for Sport, athletes impliedly accept Court of Arbitration for Sport as impartial).

⁶⁸ See e.g., Bundesgericht [Federal Supreme Court Apr. 19, 2011, A._____ v. Trabzonspor and TFF, 4A_404/2010 (Switz.)], available online at <http://www.swissarbitrationdecisions.com/sites/default/files/19%20avril%202011%204A%20404%202010.pdf>.

⁶⁹ GAISF Statutes, *supra* note 3, at 4.

its Members in agreement and cooperation with its Members[.]”⁷⁰ GAISF is governed by its own statutes.⁷¹ GAISF’s executive body is called the Council.⁷²

GAISF is similar to the IOC in that its structure includes an international federation and a national federation, which its statutes define as “a body representing a sport or a number of sports in a country that is recognised by the NOC and/or the highest sporting authority of the country[.]”⁷³

C. Recognition Processes

i. Criteria for International Federation Recognition by the IOC

To become recognized as an international federation by the IOC, a non-government organization must send an official letter to the IOC Sports Department stating “its willingness to apply for IOC recognition[.]”⁷⁴ Second, GAISF studies the organization’s request.⁷⁵ The analysis “serve[s] as a basis for discussion within the IOC, which will submit potential recognition request to the IOC Executive Board for a provisional recognition of two years, and subsequently to the IOC Session for full recognition.”⁷⁶ Third, “the IOC Executive Board . . . stud[ies] and decide[s] upon the recognition requests from applicants.”⁷⁷ “This provisional period is, by default, two years.”⁷⁸ “Official notification of recognition or non-recognition will be sent by the IOC to each applicant.”⁷⁹ Fourth, the IOC Session “decides whether or not full recognition of the [international federation] concerned will be granted” “[a]t the end of the provisional recognition period, and upon the recommendation of the IOC Executive Board[.]”⁸⁰

In considering the organization’s application for recognition, the IOC evaluates several themes, including governance, history and tradition, universality, and development of the international federation or sport.⁸¹ Within the themes are several criteria, which each have at least one item to

⁷⁰ *Id.*

⁷¹ *Id.* at 10.

⁷² *Id.* at 12.

⁷³ *Id.* at 9.

⁷⁴ *International Sports Federations Requesting IOC Recognition*, INT’L OLYMPIC COMM., 6 (July 2013), http://www.slalomskateboarder.com/ISSA/2015-Discussion/IOC_MASTER_Recognition_procedure_document_for_IFs.pdf.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See generally id.* at 3.

be evaluated.⁸² The governance theme includes a criteria on “[g]ood governance basic principles[.]” which includes the items “[e]xistence of transparent and enhanced international dispute resolution mechanism” and

“[s]ubmission to the Court of Arbitration for Sport . . . of all disputes which cannot be settled amicably or through local arbitration or mediation; types of disputes for which the Court of Arbitration for Sport is used; number of cases in which the [international federation] is involved.”⁸³

The history and tradition theme includes the general criteria World Championships, which includes the items “Year the World Championships and Junior World Championships were first held for each discipline or sport, for men and women”⁸⁴ and “Number of World Championships and Junior World Championships held to date for each discipline or sport, for men and women[.]”⁸⁵ The “[o]ther multi-sports [g]ames”⁸⁶ criteria includes the item “[n]umber of times each recognised discipline or sport has been included in the selected multi-sports Games (World Games, Universiade, Commonwealth Games, Continental Games – All Africa Games, Asian Games, Pan-American Games and Mediterranean Games, Sport Accord Multi-Sports Games)[.]”⁸⁷

The universality⁸⁸ theme includes the criteria “Number of affiliated national federations[.]”⁸⁹ which includes an item on the “[n]umber of [n]ational [f]ederations affiliated to the [i]nternational [f]ederation which correspond to the National Olympic Committees[.]”⁹⁰ “Active member national federations” is another criterion⁹¹ which includes the item “[n]umber of [n]ational [f]ederations which participated in the last two [c]ontinental [c]hampionships for men and women[.]”⁹²

Finally, the “[d]evelopment of the [international federation]/ Sport”⁹³ theme includes the criteria “[t]echnical evolution of the sport”⁹⁴ which includes the item

“[e]xistence of means to control the technical evolution within the sport regarding venues, sports equipment (items used by athletes in

⁸² See e.g., *International Sports Federations Requesting IOC Recognition*, *supra* note 74 at 2-5.

⁸³ *Id.* at 3.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 5.

⁹⁴ *Id.*

the practice of the sport) and competition clothing (items worn by athletes and subject to IF technical specifications)[.]”⁹⁵

Another criteria is on “[t]ransparency and fairness on the field of play”⁹⁶ which includes the item

“[s]teps taken by the [international federation] to ensure that the outcome of the competition will be as objective and fair as possible, including selection & evaluation process for judges, training and certification and impact of judging on results[.]”⁹⁷

The applicant-organization’s

“statutes, practice and activities of the [international federations] within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code as well as the Olympic Movement Code on the Prevention of Manipulation of Competitions. Subject to the foregoing, each [international federation] maintains its independence and autonomy in the governance of its sport.”⁹⁸

It is worth noting that IOC’s recognition criteria for international federations are not easily accessible or otherwise easy to locate on the IOC’s official page.⁹⁹

ii. Criteria for Internal Federation Recognition by GAISF

GAISF has two main categories of members, Full Members and Associate Members, which are then categorized into one of five divisions.¹⁰⁰ GAISF may grant applicant-organizations “observer status,”

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ OLYMPIC CHARTER, *supra* note 1, at 55.

⁹⁹ GAISF’s statutes describe its recognition process for membership admission. GAISF Statutes, *supra* note 3, at 5. Searching the website of the Olympics with terms like “international federation recognition” yields no results on the IOC’s international federation recognition process. Many of the documents referenced for the IOC recognition process are documents provided on an international federation’s website. The documents featured a heading with the IOC’s name, the Olympic rings, and words like “Recognition Procedure.” See e.g., *International Sports Federations Requesting IOC Recognition*, *supra* note 74. Criteria listed corroborated with other documents with similar features provided on the websites of other international federations. See e.g., Evaluation Criteria for Sports and Disciplines, INT’L OLYMPIC COMM., (2012), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Programme_commission/2012-06-12-IOC-evaluation-criteria-for-sports-and-disciplines.docx.pdf; Robert Rauch, Recognition by the International Olympic Committee: The Future of Ultimate and Flying Disc Sports (July 20, 2013), http://www.wfdf.org/about/congress-files/cat_view/56-wfdf-congress/124-wfdf-congress-2013 (click “WFDF Congress Presentation IOC recognition”). Criteria for the recognition process has since been changed. IOC, *IOC Annual Report 2016 (July 2017)*, IOC Annual Report, <https://www.olympic.org/documents/ioc-annual-report>.

¹⁰⁰ GAISF Statutes, *supra* note 3, at 5. The divisions are: the Association of Summer Olympic International Federations, the Association of International Olympic Winter Sports

which allows the applicant-organization to attend the General Assembly,¹⁰¹ while its application is pending if “no reasonable rivalry issues with an existing Member.”¹⁰²

A condition of membership for Full Members is that the organization “groups together the majority of the National Federations (or organisations) throughout the world practising its sport and regularly holding international competitions[.]”¹⁰³ A condition of membership for Associate Members is that the organization “groups together the activities of several Members generally for the purpose of organising competitions.”¹⁰⁴

The statutes explicitly lists its criteria for organizations interested in applying as a Full Member or Associate Member. Full Membership for GAISF requires, among other things:

- “a written declaration justifying that the sport or activity which [the applicant] control does not conflict with or is not in rivalry with an already existing Member of GAISF;”
- “a written declaration justifying that the IF is the only federation governing its sport on a world level. Provide, if any, the name of dissident organisations and explain how and which solutions were arranged;”
- “a copy of its constitution/statutes, regulations and directives which must comply with the World Anti-Doping Code. . . . The constitution/statute of the candidate must also contain a specific provision recognising the exclusive jurisdiction of the Court of Arbitration for Sport, in Lausanne, Switzerland;”
- “a list of its Member National Federations (where applicable), grouped by continents[.]”
- “at the national level, the sport – represented by the IF applying for GAISF membership – must include one of the disciplines recognised by the member NF. The National Federation must be a full member of the corresponding International Federation applying for GAISF membership. No categories other than the full membership to the IF will be taken into account;” and

Federations, the Association of IOC Recognized International Sports Federations, and the Alliance of Independent Recognized Members of Sport, and Associate Members. *Id.*

¹⁰¹ GAISF Statutes, *supra* note 3, at 12. “The General Assembly is the meeting of all GAISF Members. It is the supreme organ of GAISF.” *Id.*

¹⁰² GAISF Statutes, *supra* note 3, at 10.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.*

- “a list of the National Olympic Committees (NOCs) or National Sport Authorities (NSAs) recognising its Member National Federations; A recognition certification signed and stamped by the NOC and/or NSA must be enclosed within the membership application for GAISF.”

105

iii. Recognition for Sports and Disciplines Within a Sport

Both the Olympic Charter and the Statutes do not provide a definition of what a sport is. Similarly, the Olympic Charter and the Statutes do not define what constitutes a discipline of a sport. Neither set of governing documents describes criteria must be met to determine when activity constitutes a sport, nor do either set of governing documents provide criteria to determine whether an activity qualifies as a sport rather than a discipline of a sport.¹⁰⁶

D. *Parkour and FIG: A Live Dispute of the IOC's Recognition Process*

The absence of definitions for “sport” and “discipline” in the Olympic Charter and the Statutes, as well as the absence of readily-available international federation recognition criteria by the IOC, has led to struggles in authority between sports communities where no organization that has taken a clear lead in the sport and already-recognized international federations. The controversy between parkour practitioners and FIG is an example of the issues that may surface as a result.

i. Parkour

Parkour¹⁰⁷ is the “physical discipline of training to move freely over and through any terrain using only the abilities of the body, principally

¹⁰⁵ *Id.* at 6–7.

¹⁰⁶ Compare with Council of Europe, European Sports Charter (May 2001), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804c9dbb (defining sport as “all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.”)

¹⁰⁷ The terms “parkour,” “freerunning,” and “Art du Déplacement” are often used interchangeably among practitioners. See e.g., Letter from Eugene Minogue, Chief Executive, Parkour UK, & Stephen Mitchell, Independent Chair, Parkour UK, to Morinari Watanabe, President, Fédération Internationale de Gymnastique at unpag. 1 (Mar. 31, 2017), available at <http://parkour.uk/wp-content/uploads/2017/03/Letter-to-FIG-March-2017-FINAL.pdf>. David Belle, one of the nine people credited for founding parkour, first introduced the word “parkour” in 1998. *Id.* at 2. Parkour comes from the French word, “parcours,” which means “route” or “course.” *Id.* The other eight people credited for founding parkour are “Sabastien Foucan, Yann Hnautra, Chau Belle, Laurent Piemontesi, Guylain N’Guba Boyeke, Charles Perriere, Malik Diouf and Williams Belle.” *Id.* Guillaume Pelletier, one of several French practitioners, created the word “freerunning” to “describe the ethos of this new sport to an English-speaking audience.” *Id.* Some organizations distinguish between parkour and freerunning. For example, some describe parkour as “running, swinging, jumping, and

through running, jumping, climbing[,] and quadrupedal movement.”¹⁰⁸ Its practice includes “functional strength and fitness, balance, spatial awareness, agility, coordination, precision, control[,] and creative vision.”¹⁰⁹ Parkour practitioners are called “traceurs.”¹¹⁰ Since its founding in the 1980s,¹¹¹ community groups,¹¹² gyms¹¹³ and governing bodies¹¹⁴ have surfaced across the globe. Despite being recognized¹¹⁵ or described¹¹⁶ as a sport in some countries, parkour is not competitive.¹¹⁷ “Parkour is not

climbing from point A to point B in the quickest way possible,” in contrast to freerunning, which is “similar, but . . . emphasizes the flashy side of parkour, with . . . flips and stylistic acrobats. . . like an art of movement to express your creativity with your environment” Stephanie Lee, *The Difference Between Parkour and Freerunning*, LIFEHACKER VITALS (June 15, 2016), <https://vitals.lifehacker.com/the-difference-between-parkour-and-freerunning-1781827293>. See also Australian Parkour Association, *About the Australian Parkour Association*, AUSTRALIAN PARKOUR ASSOCIATION, <https://parkour.asn.au/about/> (last accessed Oct. 8, 2017). (featuring a freerunning class separate from its other activities). For this Comment, “parkour” treats parkour, freerunning, and Art du Deplacement as the same sport.

¹⁰⁸ Letter from Eugene Minogue & Stephen Mitchell, *supra* note 107, at 1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 2.

¹¹² For example, Newcastle Parkour is a parkour community in Newcastle, Australia, that offers classes and resources about parkour. Newcastle Parkour, *Classes*, NEW CASTLE PARKOUR, <http://newcastleparkour.com/classes/> (last visited Nov. 2, 2017). Concrete Foundation Crew is one of several groups in South Africa. Parkour South Africa, *Groups*, PARKOUR SOUTH AFRICA, <http://www.parkour.co.za/groups/> (last visited Nov. 2, 2017). ParkourONE is a parkour group in Switzerland. ParkourOne, *Region*, PARKOURONE, <https://parkourone.com/regionen/schweiz/> (last accessed Nov. 3, 2017).

¹¹³ See e.g., Apex, School of Movement, with gyms in Colorado, California, and Connecticut, *About*, APEX, <https://apexmovement.com/about/> (last visited Nov. 2, 2017); Pinnacle Parkour, a gym in New Jersey, Apex School of Movement, *About*, APEX, <https://apexmovement.com/about/> (last visited Nov. 2, 2017).

¹¹⁴ For example, New Zealand Parkour is recognized in New Zealand as the national governing body for parkour. New Zealand Parkour, *About*, NEW ZEALAND PARKOUR, <http://nzparkour.co.nz/about/#1> (last visited Nov. 2, 2017).. Fédération de Parkour is the recognized national governing body in France. Daniel Etchells, *New Zealand Parkour Association Back “Encroachment and Misappropriation Accusations Against FIG”*, INSIDE THE GAMES (May 11, 2017), <https://www.insidethegames.biz/articles/1050237/new-zealand-parkour-association-back-encroachment-and-misappropriation-accusations-against-fig>. See also New Zealand Parkour, *New Zealand Parkour*, NEW ZEALAND PARKOUR, <http://nzparkour.co.nz/> (last visited Oct. 8, 2017). Parkour UK is the recognized “National Governing Body (NGB)” in the UK. Parkour UK, *What We Do*, PARKOUR UK, <http://parkour.uk/what-we-do/> (last visited Sept. 29, 2017).

¹¹⁵ Parkour UK has been recognized by the UK Sports Councils as the national governing body for parkour in the United Kingdom. Letter from Eugene Minogue, *supra* note 107, at 2. Part of UK Sports Council’s recognition of an organization as a NF includes recognizing the activity practiced by the organization is a sport. *Sports Councils’ Recognition Policy 2* (2017), <https://www.sportengland.org/media/12132/uk-recognition-policy-2017.pdf>.

¹¹⁶ Rendao unknowingly took the textualist approach when describing parkour as a sport by referencing the Miriam-Webster dictionary, which defines sport as “physical activity engage in for pleasure . . . a particular activity (as an athletic game) so engage in[.]” Amos Rendao, Brandon Douglass, & Ryan Ford, *On Competition & Collaboration*, APEX SCHOOL OF MOVEMENT (Apr. 23, 2017), <https://apexmovement.com/blog/on-competition-collaboration/>.

¹¹⁷ Letter from Eugene Minogue, *supra* note 107, at 1. See also Max Bell, *Leaked Email Stating FIG’s Intent to Create Obstacle Course Competitions*, OBSTACLE RACERS NZ (May 17, 2017), <http://www.obstacleracersnz.co.nz/2017/05/17/obstacle-sport-federation-comments->

something you can win.”¹¹⁸ Furthermore, parkour is not governed by any international federation.¹¹⁹ At least one organization, the International Parkour Federation, has applied to be recognized by GAISF, but its application for recognition “has been pending for three years.”¹²⁰

While parkour as a sport is not competitive, parkour techniques “fit easily into competition culture.”¹²¹ Traceurs have recognized the benefits that competition brings to a sport.¹²² Accordingly, gyms and other community organizations have planned and executed obstacle course competitions that incorporate parkour movements. For example, Apex Movement, “a group of professional parkour coaches, athletes, and performers. . . . [with] multiple gym locations in Colorado, California, and Connecticut”¹²³ has hosted obstacle course competitions, called Obstacle Course Sprints, since 2009.¹²⁴ These competitions “are not exclusive to parkour practitioners but are inclusive to anyone who thinks they have the skills to go the fastest on short, dense, real-world based obstacle courses.”¹²⁵

While traceurs do not compete with each other, competitors can compare “who has the biggest jump the fastest time” and count the number of techniques executed over certain obstacles.¹²⁶ Amos Rendao, owner of Apex,¹²⁷ compared the potential for exposure of parkour in obstacle course competitions, stating that competitors

“get a lot of positive exposure in the same way a mixed martial arts . . . fighter gives exposure to their background martial arts. A[] . . . fighter may have a Muay Thai and Brazilian Jiu Jitsu background that makes up the bulk of their style of combat. In the same way, a course runner may have a track [and] field, [obstacle course

on-gymnastics-new-obstacle-sport/; Rendao et al., *supra* note 116. Some may describe parkour as a competition, but against yourself rather than against others. Amy Han, *Parkour: The Spectacle, the Practical, the Philosophical, and Where Competition Fits In*, FALLING LEAVES & A BIRD (Nov. 29, 2016), <https://fallingleavesandabird.com/>.

¹¹⁸ Rendao et al., *supra* note 116.

¹¹⁹ Max Bell, *Controversy Over New Gymnastics-based Obstacle Sport as Key Partner Pulls Out*, OBSTACLE RACERS NZ (May 14, 2017), <http://www.obstacleracersnz.co.nz/2017/05/14/controversy-over-new-gymnastics-based-obstacle-sport-as-key-partner-pulls-out/>.

¹²⁰ Max Bell, *Parkour Earth launches as International Federation for Sport of Parkour*, OBSTACLE RACERS NZ (Aug. 13, 2017), <http://www.obstacleracersnz.co.nz/2017/08/13/parkour-earth-launches-as-international-federation-protecting-the-sovereignty-of-parkour/>.

¹²¹ Han, *supra* note 117.

¹²² Rendao et al., *supra* note 116. Rendao noted that his obstacle course competitions foster: (1) the development of skills “to maintain control under high pressure,” (2) community, (3) a sense of humility. *Id.*

¹²³ Apex School of Movement, *About*, APEX, <https://apexmovement.com/about/> (last visited Dec. 19, 2017).

¹²⁴ Rendao et al., *supra* note 116.

¹²⁵ *Id.*

¹²⁶ Han, *supra* note 117.

¹²⁷ Amos Rendao, *The Story*, AMOS RENDAO, <http://www.amosrendao.com/the-story/> (last visited Feb. 21, 2019).

racing], parkour, and speed climbing background as they compete in [Obstacle Course Sprints].”¹²⁸

Rendao explains that, like skiing, climbing, and surfing, parkour should not “be recognized as [a] competitive sport[.]” in its entirety.¹²⁹ Parkour, skiing, climbing, and surfing are all similar because training methods for these sports predates and goes beyond what a specific event focuses and showcases.¹³⁰ Thus, obstacle course competition competitors may borrow parkour techniques like vaults to traverse an obstacle, but the library of parkour techniques includes more than just vaults.¹³¹ A new competition can be created without encompassing the sport as a whole.¹³²

ii. The International Extreme Sports Festival¹³³

In late 2016, Rendao and others learned of the opportunity to bring obstacle course competitions to an international audience.¹³⁴ Discussions became serious around February and March of 2017 when FIG and a group, the International Extreme Sports Festival Association emerged as key partners for Apex’s Obstacle Course Sprint.¹³⁵ The International Extreme Sports Festival Association organizes the International Extreme Sports Festival, “a staple event in the action sports calendar” involving “over 25 competitions that bring together the most popular action sports: skateboard, BMX, mountain bike, wakeboard, [and] inline skate.”¹³⁶ Rendao agreed to work with FIG under certain conditions. First, he sought “significant control over ongoing development, presentation, format, etc. of the [Obstacle Course Sprint] by having two spots on the highest committee that would have final say.”¹³⁷ Second, as an extension of the control process, Rendao agreed to move forward if he was “assured that important off-limit terms like parkour, gymnastics, freerunning, art du déplacement, and parcours were never to be used in the naming of [the] competition format.”¹³⁸ Lastly, Rendao proceeded under the premise that governance of parkour was not on

¹²⁸ Rendao et al., *supra* note 116.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *See id.*

¹³² *See id.*

¹³³ This is an English translation of the contest’s title, “Festival Internal des Sports Extrêmes.” *About Us*, FESTIVAL INTERNAL DES SPORTS EXTRÊMES, <http://fise.fr/en/about-us-0> (last visited Feb. 21, 2019).

¹³⁴ Amos Rendao, et al., *APEX Ends Collaboration with FIG & Cancels APEX INTL in France*, APEX SCHOOL OF MOVEMENT (May 13, 2017), <https://apexmovement.com/blog/apex-intl-canceled>.

¹³⁵ *Id.*

¹³⁶ Philippe Sirech, *FISE 2017, the 20th Anniversary was a Blast*, UNLEASHED (May 31, 2017), <https://unleashedwakemag.com/fise-2017-20-th-anniversary-blast/>.

¹³⁷ Rendao et al., *APEX Ends Collaboration*, *supra* note 134.

¹³⁸ *Id.*

the table for consideration. Rendao recalls that, “[t]here was zero mention of any interest in FIG governing parkour.”¹³⁹

iii. FIG Debuts a New Discipline

On February 24, 2017, FIG issued a press release on the development of a FIG discipline based on parkour¹⁴⁰ “[f]ollowing the presentation and research into parcours d’obstacles (obstacle course competitions) and parkour, already part of the work of many national gymnastics federations including Sweden, The Netherlands and Belgium[.]”¹⁴¹ FIG President Watanabe stated that he “deeply respects the development of parkour as a non-competitive training methodology, based on obstacles that were not created as such, and with a particular philosophy emphasizing efficiency, usefulness and personal development.”¹⁴²

While the development of FIG’s creation of a parkour-based discipline was ongoing, news spread that FIG planned to appoint a FIG Parkour Committee, chaired by Belle and include Perriere, other parkour experts, and two athletes “which shall work in three areas, education, development and competitions.”¹⁴³

iv. The Parkour Community Responds to FIG’s Announcement

Beginning March 31, 2017, parkour communities across the globe began issuing open letters to FIG President Watanabe to protest the development of FIG’s new discipline.¹⁴⁴ The following shows how sports communities with no international federation respond to an international federation’s attempt to adopt a discipline with “completely different histories, cultures, and purposes[,] [where] [a]ny overlap” between the two sports community to be annexed as a discipline and the international federation trying to annex the sport is superficial.¹⁴⁵

¹³⁹ *Id.*

¹⁴⁰ *Parkour UK Issues Open Letter to Fédération Internationale de Gymnastique (FIG) Re: The Encroachment and Misappropriation of Parkour/Freerunning*, PARKOUR UK, <http://parkour.uk/parkour-uk-issues-open-letter-to-federation-internationale-de-gymnastique-fig-re-the-encroachment-and-misappropriation-of-parkourfreerunning/> (last visited Feb. 21, 2019) [hereinafter “Parkour UK’s Open Letter to FIG”].

¹⁴¹ Press Release, FEDERATION INTERNATIONALE DE GYMNASTIQUE, *First Meeting, First Key Decisions from the New FIG Executive Committee* (Feb. 24, 2017), <http://campaign.r20.constantcontact.com/render?m=1104002974775&ca=3514ded5-82cd-4788-8249-b3807e822f52> [hereinafter “Feb. 24, 2017 FIG Press Release”].

¹⁴² *Id.*

¹⁴³ Rebecca Johnson, *Update On Development Of Parkour As New FIG Discipline*, FLO GYMNASTICS (June 9, 2017), <https://www.flogymnastics.com/articles/5066562-update-on-development-of-parkour-as-new-fig-discipline>.

¹⁴⁴ See generally Parkour UK’s Open Letter to FIG, *supra* note 140.

¹⁴⁵ Aaron Gordon, *How Gymnastics is Trying to Take Over Parkour and Make it an Olympic Sport*, VICE SPORTS (July 11, 2017, 12:47 pm), https://sports.vice.com/en_us/article/qvp395/how-gymnastics-is-trying-to-take-over-parkour-and-make-it-an-olympic-sport.

a. *Parkour UK's Response*

Parkour UK, a parkour organization recognized in the United Kingdom as the national governing body for parkour,¹⁴⁶ was one of the first parkour organizations to respond to FIG's February 24, 2017 press release. A letter from Parkour UK Chief Executive, Eugene Minogue, and Stephen Mitchell, Independent Chair, stated FIG's decision to create new discipline was "encroachment and misappropriation" of their sport.¹⁴⁷ Minogue and Mitchell highlighted one of the Fundamental Principles of Olympism:

"Recognising that sport occurs within the framework of society, sports organisations [within the Olympic Movement] shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied."¹⁴⁸

The letter also mentions Parkour UK's previous experience with similar events at the national level when British Gymnastics, Britain's national federation for gymnastics, developed a program that imitated parkour.¹⁴⁹ Parkour UK "addressed this with British Gymnastics [and] the UK Sports Councils [in] March 2013, to ensure that [parkour] is not misappropriated and/or encroached upon."¹⁵⁰ Parkour UK's letter also reiterated its position that Parkour UK is the national recognized governing body for parkour as a sport in the UK.¹⁵¹ Minogue and Mitchell wrote that parkour is not gymnastics, that traceurs are not gymnasts, and that parkour is its own "sovereign sport with independently recognised distinct uniqueness and cultural status."¹⁵² Minogue and Mitchell invited other national communities to "issue letters of support for Parkour UK's position to FIG . . . to ensure[,] protect[,] and promote the integrity of our sport, the rights, freedoms and interests of [t]raceurs . . . internationally[.]"¹⁵³

Parkour UK provides two main arguments. First, FIG lacks the competence to govern over a discipline based on parkour.¹⁵⁴ Parkour is different from gymnastics, featuring different environments that require different techniques. For example, many gymnasts perform routines on

¹⁴⁶ *What We Do*, PARKOUR UK, <http://parkour.uk/what-we-do/> (last visited Feb. 21, 2019).

¹⁴⁷ Parkour UK's Open Letter to FIG, *supra* note 140.

¹⁴⁸ Letter from Eugene Minogue & Stephen Mitchell, *supra* note 107 (emphasis removed) (quoting Olympic Charter, *supra* note 13, at Fundamental Principles of Olympism).

¹⁴⁹ See Parkour UK's Open Letter to FIG, *supra* note 140.

¹⁵⁰ *Id.*

¹⁵¹ See *id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Letter from Eugene Minogue & Stephen Mitchell, *supra* note 107.

spring-board floors.¹⁵⁵ Parkour, by contrast, is performed in outdoor environments¹⁵⁶ which often require traceurs to interact with concrete, asphalt, grass, brick, and other less impact-absorbent structures. Thus, how a gymnast would perform a front flip and how a traceur perform a front flip are different. Second, Parkour UK argues, FIG lacks the authority and legitimacy to develop a parkour-related discipline.¹⁵⁷

The letter concludes by welcoming a meeting with FIG, to be memorialized in a Memorandum of Understanding, “to formally acknowledge and [recognize] sovereignty of Parkour[.]”¹⁵⁸ Minogue and Mitchell requested that the meeting be “prefaced with an agreed and binding arbitration agreement referring any dispute” to CAS’ jurisdiction.¹⁵⁹ Minogue and Mitchell proposed that if FIG failed to act in 60 days,

“any dispute arising from and/or related to the binding arbitration agreement will be submitted exclusively to [CAS] . . . and resolved definitively in accordance with the Codes of sports-related arbitration.”¹⁶⁰

b. Response from Others Parkour Communities and Organizations

Soon after Parkour UK published its letter, other communities issued open letters of their own to FIG. The International Parkour Federation¹⁶¹ stated FIG lacked any “organic understanding of [p]arkour”¹⁶² and compared FIG’s announcement of its new discipline as “someone breaking into our home and saying, ‘Just give us two of your four children and we’ll leave you alone to raise the other two as you wish.’”¹⁶³ New Zealand Parkour and the Australian Parkour Association echoed Parkour UK’s sentiment that FIG’s announcement represented encroachment and misappropriation.¹⁶⁴ The Australian Parkour Association and other

¹⁵⁵ *Women’s Artistic Gymnastics Event Descriptions*, USA GYMNASTICS, <https://usagym.org/pages/gymnastics101/women/events.html> (last visited Mar. 6, 2019).

¹⁵⁶ Letter from Eugene Minogue & Stephen Mitchell, *supra* note 107.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ At the time of writing this Note, International Parkour Federation has not been recognized by either the IOC or GAISF.

¹⁶² Letter from Victor Bevine & David Thompson, Co-Founders, International Parkour Federation/WFPF, to André Gueisbuhler, Secretary General, Fédération Internationale de Gymnastique at unp. 1 (May. 31, 2017), <https://web.archive.org/web/20171102173734/https://www.wfpf.com/message-wfpf-ipf-re-attempt-fig-federation-international-de-gymnastique-take-competitive-parkour>.

¹⁶³ *Id.*

¹⁶⁴ Letter from Damien Puddle, CEO, New Zealand Parkour, and Nigel Elvidge, Chairman, New Zealand Parkour, to Morinari Watanabe, President, Fédération Internationale de Gymnastique (May 11, 2017), <http://nzparkour.co.nz/wp-content/uploads/2015/05/Parkour-NZ-Open-Letter-to-FIG.pdf>; *See also*, Letter from Eliot Duffy, President, Australian Parkour Association, to Morinari Watanabe, President, Fédération Internationale de Gymnastique (May 12, 2017), <https://web.archive.org/web/20180914150918/http://parkour.asn.au/open-letter-to->

communities¹⁶⁵ stated that FIG Secretary General Andre Guesbugler's understanding of parkour's history was inaccurate and ill-informed.¹⁶⁶ The Australian Parkour Association also rejected Guesbugler's comment that the parkour community was not organized in its development of parkour.¹⁶⁷ Other geographically-based communities began collaborating to create new, national federations "to prevent the encroachment and misappropriation of our sport nationally."¹⁶⁸

On May 13, 2017, Rendao updated Apex Movement's website announced its formal termination with FIG in the development of the obstacle course competition.¹⁶⁹ Rendao stated that he and the rest of the Apex Movement community, as defenders of the parkour community, "do not stand for FIG governing parkour."¹⁷⁰ Rendao said the opportunity to collaborate with FIG for the obstacle course competition "as it was presented to us is no longer aligned with surfacing information, and key assurances over the naming of our competition format were neglected publicly in statements made by FIG."¹⁷¹ "FIG's interests do not coincide with what we perceive to be a step forward for the international parkour

the-federation-internationale-de-gymnastique-on-the-encroachment-and-misappropriation-of-parkour.

¹⁶⁵ The open letter from German-based parkour groups Ashigaru, Parkour Movement, ParkourONE, and Parkour Stuttgart also "reject[ed] the assertions of FIG Secretary General, André Gueisbuhler, regarding the history of [p]arkour as inaccurate and ill-informed." Letter from Enis Maslic, Ashigaru, Maren Baufeld, Parkour Stuttgart e.V., Giulio Hesse, Parkour Movement, e.V., and Ben Scheffler, ParkourONE, to Morinari Watanabe, President, Fédération Internationale de Gymnastique at unp. 1 (May 19, 2017), <https://www.facebook.com/parkourone/posts/10154898023314177> [hereinafter "Letter from Ashigaru, et al."].

¹⁶⁶ Letter from Eliot Duffy, *supra* note 164.

¹⁶⁷ *Id.* In a separate update by Rendao on Apex's website, he quoted Secretary General Guesbugler, who stated,

"At the moment [parkour practitioners] are not organized. Their basic spirit is to be free, not to be organized. Yet they want to have competitions. But if they want to do competitions, obviously they need minimum rules and environment to make attractive competitions. I'm sure FIG is the international federation most qualified to further develop parkour."

Rendao et al., *APEX Ends Collaboration*, *supra* note 134 (internal quotation marks omitted) (citing Vestnik Kavkaza, *Andre Gueisbuhler: "Azerbaijan is helping the world gymnastics"*, VESTNIK (May 4, 2017), http://parkour.uk/wp-content/uploads/2017/05/Appendix-14-Andre-Gueisbuhler_-_Azerbaijan-is-helping-the-world-gymnastics_-_Vestnik-Kavkaza.pdf).

¹⁶⁸ For example, four German-based parkour groups reached an accord to create a new national federation. Letter from Ashigaru, et al., *supra* note 167.

¹⁶⁹ Letter from Eliot Duffy, *supra* note 164.

¹⁷⁰ Rendao et al., *APEX Ends Collaboration*, *supra* note 134.

¹⁷¹ *Id.*

community.”¹⁷² Across all open letters were the same theme: parkour is its own sovereign, culturally independent from gymnastics.¹⁷³

E. *Development and Events After the Open Letters*

Despite the open letters from members in the parkour community, FIG continued pursuing the new discipline and proposed its “full inclusion at Tokyo 2020.”¹⁷⁴ On May 10, 2017, FIG issued another press release stating its approval of “the key stages for the discipline’s formal inclusion, with a view to organizing World Cup series in 2018 and 2019 and World Championships from 2020.”¹⁷⁵ FIG’s parkour experts, who remained unnamed, sought to include two obstacle course formats: an obstacle course sprint, in which participants would race through a course against the clock, and a freestyle, in which participants would be judged.¹⁷⁶ The courses would be “based on real-world shapes found in urban and natural environments.”¹⁷⁷ President Watanabe again stated that FIG was developing its new discipline “with the desire to respect the philosophy that drove the founders of parkour, and to empower them.”¹⁷⁸

On May 19, 2017, FIG’s Secretary General André Gueisbuhler sent an email to Minogue reading “[i]t is not FIG’s policy to correspond with ‘open letters’ and we do not wish to interfere in any National

¹⁷² *Id.*

¹⁷³ See Letter from Ashigaru, et al., *supra* note 167 (supporting stances of Parkour UK, Fédération de Parkour, Australian Parkour Association, and the New Zealand Parkour Association that FIG’s development of a parkour-based discipline is encroachment and misappropriation); “*Invasión y apropiación indebida*” del Parkour por parte de la FIG, INONDER (May 20, 2017), <https://web.archive.org/web/20180423145056/https://inonder.com.mx/invasion-apropiacion-indebida-parkour-fig>; *Carta a la Federación Mexicana de Gimnasia por parte de la comunidad de Parkour*, INONDER (May 20, 2017), <https://web.archive.org/web/20180207160436/http://inonder.com.mx/carta-federacion-mexicana-gimnasia-parkour>.

¹⁷⁴ Nick Butler, *Exclusive: International Gymnastics Federation Present Parkour for Olympic Inclusion at Tokyo 2020*, INSIDE THE GAMES (May 5, 2017), <https://www.insidethegames.biz/articles/1050020/exclusive-international-gymnastics-federation-present-parkour-for-olympic-inclusion-at-tokyo-2020>. FIG’s proposal for the Tokyo 2020 Olympic Games was denied at an IOC Executive Board meeting in June 2017. Michael Pavitt, *FIG to Launch Parkour World Cup Series in November*, INSIDE THE GAMES (Aug. 1, 2017), <https://www.insidethegames.biz/articles/1053511/fig-to-launch-parkour-world-cup-series-in-november>.

¹⁷⁵ *FIG Decision-Making Bodies Greenlight Inclusion of a New Discipline*, AROUND THE RINGS (May 10, 2017), http://aroundtherings.com/site/A_60083/Title__FIG-Decision-Making-Bodies-Greenlight-Inclusion-of-a-New-Discipline/292/Articles [hereinafter “May 10, 2017 FIG Press Release”].

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

recognition procedures.”¹⁷⁹ Gueisbuhler also clarified that FIG is an international organization and that it invited the other international federations representing parkour that they were aware of.¹⁸⁰

FIG’s first event featuring its new discipline was scheduled for debut in May 28, 2017, during the International Extreme Sports Festival in Montpellier, France.¹⁸¹ The event would serve as a model for “a proposed urban cluster at the Tokyo Olympics and future games[.]”¹⁸² IOC Representatives were at the event “to observe the new trends in view of the Tokyo Olympic Games.”¹⁸³ Belle stated that the “weekend was a very big step forward for parkour[.]”¹⁸⁴

On July 4, 2017, several national parkour federations “reached an accord . . . to establish Parkour Earth as the International Federation for Parkour[.]”¹⁸⁵ In its announcement, Parkour Earth stated that it intended to be parkour’s only international governing and administering body “to protect the rights, freedoms[.]” and sought to “promote the interests of traceurs[.]”¹⁸⁶

By July 26, 2017, sixty days after Parkour UK wrote its open letter to FIG, Parkour UK did not receive a response to meet.¹⁸⁷ FIG “remained[] on track with their plans to bring parkour into gymnastics[.]”¹⁸⁸ From November 3–5, FIG hosted their first Parkour World Cup in Chengdu.¹⁸⁹ President Watanabe and members of Parkour Earth met on November 7, 2–17 in hopes to “formalise the clarification, understanding[,] and recognition of the sovereignty of” and “to demonstrate [Parkour Earth’s] goodwill and intention to bring the prevailing uncertainty of the FIG’s proposals and intention to an amicable and swift resolution.”¹⁹⁰ On December 14, 2017, Parkour Earth wrote a letter to FIG which concluded that the meeting, while

¹⁷⁹ E-mail from André Gueisbuhler, Secretary General, Fédération Internationale de Gymnastique, to Eugene Minogue Chief Executive, Parkour UK (May 29, 2017, 10:46 BST), <http://parkour.uk/wp-content/uploads/2017/05/FIG-email-29.05.2017.pdf>.

¹⁸⁰ *Id.*

¹⁸¹ May 10, 2017 FIG Press Release, *supra* note 177.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Daniel Etchells, *FIG President Admits He Has Been Excited by Parkour Since First Seeing It Seven Years Ago*, INSIDE THE GAMES (May 31, 2017), <https://www.insidethegames.biz/articles/1050993/fig-president-admits-he-has-been-excited-by-parkour-since-first-seeing-it-seven-years-ago>.

¹⁸⁵ *Parkour Earth Launches*, NZ PARKOUR (Aug. 4, 2017), <http://nzparkour.co.nz/parkour-earth-launches/>. These organizations are Parkour UK, Fédération de Parkour (France), New Zealand Parkour – Tauhōkai Aotearoa, Australian Parkour Association, Parkour South Africa, and Polska Federacja Parkour i Freerun (Poland). *Members*, PARKOUR EARTH, <https://parkour.earth/#members> (last visited Mar. 7, 2019).

¹⁸⁶ Bell, *supra* note 120.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Pavitt, *supra* note 176.

¹⁹⁰ Letter from Eugene Minogue & Stephen Mitchell, *supra* note 107.

appreciated, failed to address any of Parkour Earth's "fundamental, legitimate[,] and substantiated concerns."¹⁹¹

F. *Similar Developments in Other Sports*

The parkour community is not the first to experience the struggle over the governance of its own sport from a seemingly arbitrary organization. Developments in other sports shows a pattern in IOC's disregard for consideration of existing governing bodies.

i. Snowboarding

In 1998,

"the IOC included snowboarding for the first time in the Winter Olympics, but under the International Ski Federation's . . . umbrella, rather than ushering in the burgeoning International Snowboard Federation," effectively making snowboarding a subdiscipline of skiing.¹⁹² "Terje Haakonsen, one of the most influential snowboarders ever and the best in the world at the time," stated that International Ski Federation's absorption of snowboarding hindered the International Snowboard Federation's development.¹⁹³ Haakonsen accused International Ski Federation of "using its leverage to prevent the [International Snowboard Federation] from getting lucrative television contracts," thereby leading to its downfall.¹⁹⁴ "The [International Snowboard Federation] shut down in 2002."¹⁹⁵

Predictions of whether International Snowboard Federation would not have shut down for economic reasons if IOC instead recognized the International Snowboard Federation over International Ski Federation are only speculative. The cultural effects, however, have been recognized. "Olympization of snowboarding [has] fractured the community as some competitors perfected their skillsets for Olympics-style competition, while others like Haakonsen adhered to previous ideals of creativity and expression."¹⁹⁶ Haakonsen believes Olympization of snowboarding has made it worse, "and many view the standardization of competitions as detrimental to its founding values of riding whatever the terrain provides."¹⁹⁷

¹⁹¹ *Id.*

¹⁹² Gordon, *supra* note 146.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Gordon, *supra* note 146.

ii. BMX

Union Cycliste Internationale is the international federation for “all other Olympic cycling events[.]”¹⁹⁸ Union Cycliste Internationale absorbed BMX, allegedly only because BMX practitioners also happen to use bicycles, thus completely failing to consider other factors like independent cultural heritage.¹⁹⁹ If BMX practitioners wish to take action, they would “have little sway in what funding they receive from their national governing bodies because they’re a small fish in a big pond.”²⁰⁰

iii. Skateboarding

Skateboarders have experienced a fate similar to the BMX practitioners. “[M]any skaters don’t want to be in the Olympics at all[.]”²⁰¹ The International Roller Sports Federation is the IOC-recognized international federation for all roller skating.²⁰² Its disciplines include inline freestyle, inline hockey, roller derby, and others.²⁰³ The IOC requested for the International Roller Sports Federation, despite the existence of the International Skateboarding Federation,²⁰⁴ a separate organization “established to provide direction and governance ... of skateboarding worldwide[.]”²⁰⁵ While the International Roller Sports Federation and the International Skateboarding Federation have “agreed to jointly run the Tokyo 2020 Skateboarding Commission,” some argue that the collaboration is only a short-term fix for “what promises to be a protracted legal fight over who owns skateboarding.”²⁰⁶

III. ANALYSIS

IOC has exhibited an ongoing pattern of filing sports that have their own unique history, culture, techniques, teaching structures, and other logistical infrastructure in the cabinet of existing, international federations as a new discipline rather than recognizing organizations with existing, long-standing leadership and involvement of the sport, to govern new sports or new disciplines. To remedy these issues, the Olympic Charter and the Statutes should be revised to (1) provide a means of due process by

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* (citing Damien Puddle, *Why We Need to Fight FIG: Lessons From Other Action Sports*, DAMIEN PUDDLE (May 28, 2017), <https://web.archive.org/web/20180825073144/http://damienpuddle.com/2017/05/28/why-we-need-to-fight-fig-lessons-from-other-action-sports>).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *International Roller Sports Federation (FIRS)*, SKATE LOG, <http://www.skatelog.com/firs/> (last visited Mar. 9, 2019).

²⁰³ WORLD SKATE, <http://www.worldskate.org/> (last visited Mar. 9, 2019).

²⁰⁴ Gordon, *supra* note 146.

²⁰⁵ *Skateboarding in the Olympics, International Olympic Committee Announces Street and Park Events Will Debut in Tokyo 2020*, TOKYO 2020 SKATEBOARDING COMM’N (Aug. 3, 2016), <http://skateboarding2020.com/>.

²⁰⁶ Gordon, *supra* note 146.

presenting mandatory criteria for both international federation recognition and the adoption new disciplines by an international federation; (2) provide for increased transparency its major executive body and of its parts; and (3) require public involvement. While these suggestions may not provide the exact relief aggrieved organizations and athletes would seek, sports proceedings would better mimic existing processes from government's that already show deference for the IOC and CAS. In some instances, these topics overlap and thus providing revising the Olympic Charter and/or the Statutes in one area will address several issues at once.

A. *Issues with the Current Approach to International Federation Recognition*

IOC's behavior of allocating sports to already-recognized international federations rather than non-government organizations that have invested resources and years' worth of time and experience in a sport is problematic. First, IOC's pattern is contrary to a statement it made in its 2016 Annual Report in which the IOC said that one of its aims is to give "full transparency on our operations."²⁰⁷ Despite this declaration to strive for transparency, IOC does not make the international federation criteria for recognition readily available on its site, nor does it clearly define what activities constitute a sport or what how an activity would constitute a discipline in a sport. Further, the Olympic Charter is silent on any specific criteria for consideration, save for the requirement that the international federation's statutes be consistent with the Olympic Charter and the Olympic Movement in its entirety.

Second, any organization wishing to challenge the IOC's decision to recognize one organization as the international federation for a new sport or discipline faces unique challenges because of IOC's structure and deference for IOC's operations. For example, in *Martin v. International Olympic Committee*, the U.S. judicial branch showed deference for IOC's operations by refusing to apply U.S. law to an IOC decision.²⁰⁸ Similarly, in *Liang Ren-Guey v. Lake Place 1980 Olympic Games Inc.*, the U.S. Department of Justice stated that the U.S.

"has repeatedly committed to the IOC that the United States would be bound by the list of invitees and the conditions of participation set by the IOC . . . based on our 'recognition of the private character of the [IOC] and the games.'"²⁰⁹

Thus, suits brought by, say, organizations that claim to "have been sidelined by [a different international federation] and [the IOC]" may have

²⁰⁷ IOC ANNUAL REPORT, *supra* note 11, at 5.

²⁰⁸ *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 677 (9th Cir. 1984).

²⁰⁹ *Ettinger*, *supra* note 12, at 108–09 (internal citation omitted).

limited access to judicial relief because of the deference towards IOC decisions “despite investing money and resources into preparations.”²¹⁰

This limited access to judicial relief is exacerbated by CAS’ limited jurisdiction. Recall that CAS has jurisdiction over appeals only where both parties have consented to its jurisdiction. A non-government organization that has functioned as an international federation but has not been recognized as an international federation by the IOC or GASIF, or where one party feels aggrieved by a recognized international federation’s decision to adopt another sport as a discipline, is limited in where to seek relief should IOC decides against the interests of that non-government organization.

Further, “[t]he IOC answers to no higher authority and it is free to make decisions without appeal to any other body.”²¹¹ Decisions made by the Session are final.²¹² The Olympic Charter offers no mechanism for appeal from a decision by the IOC to the Court of Arbitration for Sport.²¹³

Third, the Olympic Charter and the Statutes lack any opportunity for public involvement or commenting. Neither document requires a forum for organizations and athletes interested in the outcome of the decisions from the IOC or GAISF to be heard. Additionally, if a recognized international federation choose to adopt a sport as a new discipline, nothing in the Olympic Charter nor the Statutes requires, or even suggests, that the international federation seeking to adopt a new discipline receive any public input on the matter.

Fourth, even if the Olympic Charter and the Statutes had provisions for public involvement or comment, and even if both parties have consented to CAS’ jurisdiction, there are no criteria for CAS to apply regarding the adoption of a new discipline or recognizing a new sport. Parkour Earth has unsuccessfully requested for FIG to consent to dispute resolution through CAS for misappropriation.²¹⁴ Even if FIG agreed to subject itself to CAS’ jurisdiction, CAS lacks any rules that directly apply to FIG’s adoption of parkour as a discipline. The silence of the Olympic Charter and the Statutes on criteria for adopting a new discipline can lead to almost arbitrary results if left unchecked. For example, FIG could, if it wanted to, adopt kite flying as a discipline, against the interests of groups like the International Kite Federation, because nothing in the either the Olympic Charter nor the Statutes offers requirements when international federations seek to adopt a new discipline.

²¹⁰ Nick Butler, *World Skateboarding Federation Sue Rivals on Eve of Decision to Admit Sport into Tokyo 2020*, INSIDE THE GAMES (Aug. 1, 2016), <https://www.insidethegames.biz/articles/1040187/world-skateboarding-federation-sue-rivals-on-eve-of-decision-to-admit-sport-into-tokyo-2020>.

²¹¹ Ettinger, *supra* note 12, at 116 (internal citation omitted).

²¹² OLYMPIC CHARTER, *supra* note 1.

²¹³ *See generally id.*

²¹⁴ Letter from Eugene Minogue & Stephen Mitchell, *supra* note 107.

B. *Revising the Olympic Charter and the Statutes*

Self-governance of and by these organizations has led to negative criticism. Critics have highlighted that the undemocratic nature of self-governance by the IOC and GAISF “consider the organization’s deliberations to be the ‘machinations of a fascist-like clique’ and that the IOC consists of ‘arrogant old aristocrats.’”²¹⁵ The lack of transparency, availability of judicial remedies, and opportunity to be heard are surprising given the United States’ constitutional requirements for due process and the availability of the Swiss judicial system if an appellant seek appeals from a decision by CAS.

The issues of self-governance in international sports is important because international sports organizations influence international governance. For example, the Helsinki Accords reads,

“to expand existing links and co-operation in the field of sport the participating [s]tates will encourage contacts and exchanges on this kind, including sports meetings and competitions of all sorts, on the basis of the established international rules, regulations and practice.”²¹⁶

Some have argued that the Olympic Charter are rules of customary international law because they are the basis of international rules, regulations, and practice for sports²¹⁷ as described in the Helsinki Accords. Though the Helsinki Accords are not legally binding, “they provide a ‘morally compelling, comprehensive expression of norms to guide the behavior of the signatory states.’”²¹⁸

If sports are so highly revered to be recognized and included in an international agreement signed by 35 states, their regulation should be subject to the same standards that courts and other dispute resolution methods are subject to. Increased regulation may lead to increased costs borne by the IOC, GAISF, international federations, and all parts of international sports. But balancing costs for the sake of due process is not impossible, as judicial systems are faced with this problem have already shown.²¹⁹ CAS already shows deference for international policy.²²⁰ CAS

²¹⁵ Ettinger, *supra* note 12, at 117. Others have referred to the IOC as the “most exclusive club in the world.” *Id.* Critics have also stated self-governance of these organizations is open to acts of nepotism. *Id.*

²¹⁶ Conference on Security and Co-operation in Europe, *Helsinki Final Act*, 45 (Aug. 1, 1975), <https://www.osce.org/helsinki-final-act?download=true>.

²¹⁷ See Ettinger, *supra* note 12, at 104.

²¹⁸ *Id.* at 104–05.

²¹⁹ See *Matthews v. Eldridge*, 424 U.S. 319, 347 (1976) (“In striking the appropriate due process balance the final factor to be assessed is the public interest. This includes the administrative burden and other societal costs that would be associated with requiring, as a matter of constitutional right, an evidentiary hearing upon demand in all cases prior to the termination of disability benefits.”).

also recognizes the importance of due process because it recognizes the right to be heard as part of international public policy. Since CAS already shows respect for international policy and due process, this counters the cost concerns against amending international sports' governing documents to further due process and transparency.

i. Due Process

A clear authority over the actions of sporting federations is necessary.²²¹ An important part of clear authority over sport involves the process that sports-governing organizations use to adopt new regulations. In *USA Shooting Union (UIT)*, CAS “refused to imply a strict liability rule into the rules and practice of a sporting federation.”²²² A sports governing body’s decision to implement a new rule may affect the “careers of dedicated athletes.”²²³ Rules must be “adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion.”²²⁴

Just as CAS held that a governing body’s rules should be adopted in a constitutionally proper way, so too should a sports governing body’s decision to create a new discipline be adopted in a constitutionally protected way. The Olympic Charter, the Statutes, and international federations self-governing statutes, including those of FIG’s, do not provide procedures nor criteria that must be used by international federations to decide when it may to adopt a new discipline.²²⁵ Yet according to FIG’s February 24, 2017 press release, FIG’s decision to create a new discipline resulted from the Executive Committee’s mandate to the Presidential Commission to continue the development of the discipline.²²⁶

Further, CAS has regularly pronounced that “decisions of sporting federations can be challenged for various reasons that constitute an unfair procedure or an unfair hearing.”²²⁷ For example, in *AEK Athens & SK Slavia Prague v Union of European Football Ass’n*,²²⁸ CAS stated that “the

²²⁰ Federación Panameña de Judo et al. v. Int’l Judo Fed’n, CAS 2007/A/1392, ¶ 31 (Sept. 9, 2008), <http://jurisprudence.tas-cas.org/Shared%20Documents/1392.pdf> (“[T]he respect of the right to be heard has also to be considered as being part of international public policy, at least under the conception adopted under the *Lex arbitri*, that is to say Swiss law.”).

²²¹ Foster, *supra* note 54, at 5-6 (citing R. v. Int’l Olympic Comm., CAS OG Nagano 98/002, ¶¶ 26-27 (Feb. 20, 1998), <http://jurisprudence.tas-cas.org/Shared Documents/129.pdf>).

²²² *Id.* at 6.

²²³ *Id.* (quoting USA Shooting & Q. v. Int’l Shooting Union, CAS 94/129, ¶ 34 (May 22, 1995), <http://jurisprudence.tas-cas.org/Shared Documents/129.pdf>).

²²⁴ *Id.* (quoting USA Shooting & Q., CAS 94/129, ¶ 34).

²²⁵ See generally FIG, *Statutes* (2017), MAIN RULES, http://www.fig-gymnastics.com/publicdir/rules/files/en_Statutes%202017.pdf.

²²⁶ Feb. 24, 2017 FIG Press Release, *supra* note 141.

²²⁷ Foster, *supra* note 54, at 8.

²²⁸ CAS 98/200 (Aug. 19, 1999), <http://jurisprudence.tas-cas.org/Shared Documents/200.pdf>.

principle of procedural fairness is . . . among the unwritten principles of sports law to be complied with by international federations.”²²⁹

Ideally, the Olympic Charter and the Statutes would create minimum standards that an international sports federation must “observe to avoid legal challenges before national courts.”²³⁰ Example protections would include due process considerations like a notice and comment period, “proper and precise notification of the charge; an opportunity to present their case; cross-examination of witnesses; legal representation; . . . reasons for decisions; and a right of appeal.”²³¹

On the issues of international federation recognition and adopting a new discipline faced by the parkour and other sports communities not yet governed by a recognized international federation, the Olympic Charter and the Statutes could adopt some of the criteria provided by UKSport in its recognition process. UKSport is an organization in the United Kingdom that established a recognition process for national federations.²³² One of the several considerations for its recognition process includes an applicant-organization’s influence in the community, in which the applicant-organization

“must demonstrate it is the *leading body* for the sporting activity . . . , that it has influence throughout the sporting activity[,] and that it is working in co-operation with other organisations within its sport, or that other organisations have minimal influence within the sport.”²³³

Where several organizations exist for a sport, “the applicant should demonstrate that it is better placed than others to govern and develop its sport.”²³⁴ Providing this language would address issues of governance by providing notice to those interested in becoming a recognized international federation and would address what to do if more than one organization is interested in becoming a recognized international federation.

ii. Transparency

The Olympic Charter and the Statutes should be revised to require more transparency within its own process by, for example, requiring that the IOC, the Council, and international federations to describe its decision and its rationale for that decision. This would improve transparency and accountability of the IOC and its parts, including international federations

²²⁹ Foster, *supra* note 54, at 8 (quoting *AEK Athens*, CAS 98/200, ¶ 158).

²³⁰ *Id.*

²³¹ *Id.* (citing Philip Morris, et al., *Challenging Sports Bodies’ Determinations*, 17 Civ. J. Q. 128 (1998)).

²³² *Sports Councils’ Recognition Policy*, SPORT ENGLAND 3 (2017), <https://www.sportengland.org/media/12132/uk-recognition-policy-2017.pdf>.

²³³ *Id.* at 13 (emphasis added).

²³⁴ *Id.*

and those governed by international federations such as national federations, athletes.

A requirement provided in the Olympic Charter and the Statutes that international federations be transparent in the decision-making process would allow those who may be impacted by a decision of the IOC or an international federation to better understand when and how a decision was made. It would help to address issues like those experienced by Rendao who was blindsided by FIG's idea to govern parkour. Alternatively, organizations seeking to become part of the IOC by becoming a recognized international federation would benefit if the IOC was transparent about its international federation recognition requirements by knowing how to conduct activities towards recognition. Organizations like Parkour Earth would then be able to take the initiative to seek inclusion and involvement in the Olympic Movement.

CAS has arbitrated on the issue of transparency several times. In *Chiba v. Japan Amateur Swimming Federation*,²³⁵ a swimmer "challenged her non-selection for the Sydney Olympics" on grounds that she had swam a qualifying time and finished first in the qualifying trials[,] the two announced criteria to qualify for the Olympics.²³⁶ CAS accepted JASF's use of a third, unannounced criteria used only for the "few but best" like Chiba.²³⁷ In doing so, however, CAS also

"issue[d] a strong statement that selection criteria should be announced in advance; that professional athletes have a right to know the criteria; and that federations 'should pursue a policy of transparency and open information.'"²³⁸

Similarly, in *Beashal & Czisowski v Australian Yachting Federation*, the Court of Arbitration for Sport referred a selection for the Olympics back to the AYF

"because it had failed to follow its procedures for nomination and, because it was a close sporting call, it was possible that this may have made a difference to the outcome."²³⁹

While these proceedings relate only to the "selection of athletes to compete in the Olympic Games[.]"²⁴⁰ the IOC has shown signs of its

²³⁵ CAS 2000/A/278 (Oct. 23, 2000), <http://jurisprudence.tas-cas.org/Shared Documents/278.pdf>.

²³⁶ Foster, *supra* note 54, at 7 (citing *Chiba*, CAS 2000/A/278).

²³⁷ *Id.* (citing *Chiba*, CAS 2000/A/278).

²³⁸ *Id.* (citing *Chiba*, CAS 2000/A/278, ¶ 10).

²³⁹ *Id.* (citing *Beashal & Czisowski v Australian Yachting Fed'n*, CAS 2000/A/260 (Feb. 1, 2000), <http://jurisprudence.tas-cas.org/Shared Documents/260.pdf>).

²⁴⁰ *Id.*

willingness to become transparent where no law requires it do so.²⁴¹ Similarly, GAISF already emphasizes transparency of operations in its own statutes. For example, one of the requirements listed in its Application Procedure for Full Membership are “copies of audited financial statements, together with a detailed description of sources of income and a transparent report on expenses[.]”²⁴² GAISF is also “competent to enact guidelines implementing the provisions on admission, and to determine transparent and objective criteria for admission into GAISF.”²⁴³

iii. Public Involvement

Revising the Olympic Charter and the Statutes to include public involvement in the international federation recognition process and the adoption of a discipline process would supplement the aforementioned due process and transparency improvements. The new provision on international federation recognition could include language similar to the following: the IOC (Council) must publish a press release when it wants to recognize a new international federation. The press release shall describe the time, place, and manner for other international federations to provide input on the IOC’s decision. The press release shall also describe how those that may be impacted by this decision, but are not part of the Olympic Movement or GAISF, can provide input on the IOC’s decision. The press release shall summarize why the international federation should be recognized for the sport according to the criteria provided by the Olympic Charter (Statutes).

New provisions on the adoption of a new discipline would contain language similar to: an international federation must publish a public press release when it seeks to adopt a new discipline. The press release shall also provide information on how those who may be impacted by this decision, but are not part of the Olympic Movement or GAISF, can provide input on the IOC (Council)’s decision. The press release shall summarize why the international federation is adopting the new discipline according to the criteria provided by the Olympic Charter (Statutes).

Both provisions would feature a discrete window for involvement, using language similar to: the input period for those from those who may be impacted by this decision, but are not part of the Olympic Movement or the Global Association of International Sports Federation, must remain open for at least two months before the IOC, Council, or the international federation decides.

²⁴¹ See IOC ANNUAL REPORT 2016, *supra* note 11, at 5 (stating that the IOC “aim[s] to give full transparency on [its] operations, including all [its] financial figures and [its] indemnity policies for IOC Members.”).

²⁴² GAISF Statutes ch. II, art. 7.A.4, § 14, <http://oomfgjxh.preview.infomaniak.website/wp-content/uploads/sportaccord-statutes-2017-eng.pdf>.

²⁴³ GAISF Statutes, *supra* note 244, art. 7.A.8.

Providing the opportunity for input would help those who may be impacted by a decision of the IOC, the Council, or an international federation an opportunity to voice their concerns over adopting a discipline or recognizing an international federation beforehand. By adding a provision similar to the one suggested, the IOC, the Council, and an international federation would provide more opportunity for organizations that have functioned as international federations but have not yet been recognized a chance to be involved in the process, ideally resulting in the reduction of the type of controversies experienced by the parkour, snowboarding, BMX, and skateboarding communities.

In addition to allowing organizations that function as international federation to be heard or to dispute a decision, other organizations that lack resources for a global reach, but are otherwise enthusiastic about international involvement and the mass exposure international competitions provide, would have an opportunity to give valuable input to an international federation seeking to properly administer and govern over a sport or adopt a new discipline.

Further, CAS has already recognized that

“[i]t is a general principle of sports law, constantly recognized by the CAS jurisprudence, that the right to be heard has to be respected, even if there is no applicable rule expressly providing for such principle[.]”²⁴⁴

“Furthermore, the respect of the right to be heard has also to be considered as being part of international public policy, at least under the conception adopted under the *Lex arbitri*, that is to say Swiss law.”²⁴⁵

C. *Maintaining the Status Quo*

IOC is a respected international organization comprised of representatives to ensure the development of their own sports. It has been recognized as an international personality and its role in promoting peace has been recognized by the UN. Though IOC and GAISF provides some kind of independent relief in the form of CAS and by allowing constituents to govern themselves, it provides no relief for those who may be impacted by decisions made by itself or by its constituents through CAS.

From a legal standpoint, even if FIG fully committed to and absorbed parkour as, both the competitive obstacle sprint and the non-competitive parts such as education, as its own discipline, nothing in

²⁴⁴ Federación Panameña de Judo et al. v. Int’l Judo Fed’n, CAS 2007/A/1392, ¶ 31 (Sept. 9, 2008), <http://jurisprudence.tas-cas.org/Shared%20Documents/1392.pdf>.

²⁴⁵ *Id.*

Olympic Charter, nor do any regulations, or other laws prevent FIG from governing over parkour.

The question that surfaces, then, is whether CAS' involvement in the development of a new discipline by an international federation need to even be addressed by the IOC or GAISF at all. Participation in the Olympic Movement is a private effort, wherein participation is voluntary. Thus, organizations and communities unhappy with how FIG develops its new discipline need not apply to be an organization, club, or any part of FIG. An international federation's newfound authority, even if self-made, to govern a sport does not mark the end of the non-competitive community of the sport. For example, after snowboarding became "one of the most popular winter sports" since its Olympic debut in 1998, the non-competitive snowboarding culture and community continued to exist, albeit with tension from both the competitive and non-competitive communities.²⁴⁶ Foucan echoed the same sentiment when he asked, "Who is going to stop me [from practicing parkour] my own way, on my own?"²⁴⁷

The need for the IOC and GAISF to provide a remedy, or at least that the Olympic Charter and the Statutes provide for and require due process from its constituents for organizations that suddenly find their sovereignty encroached upon by another organization, however, does not disappear just because organizations can continue practicing separately. The IOC and international federations and control licensing for their sports. This level of control over exposure has real effects. For example, "when BMX racing lost its television coverage with ESPN, its popularity and participation rates experienced a significant decline."²⁴⁸

IV. CONCLUSION

The IOC and several international federations recognized by the IOC have exhibited recurring patterns of disengaging existing sports governing bodies and communities from the sports they influence despite the existence of independent technique, culture, and appreciation. IOC should offer these unrecognized sports' governing bodies the opportunity to be recognized by the IOC, thus allowing such organizations to continue cultivating an activity with its existing constituents. Alternatively, the IOC should offer opportunities for these communities to provide input to the already recognized federations propose adopting an already existing activity as its own sport or discipline. The parkour community, along with other sports communities, has felt the effects of Olympization of their sports.

²⁴⁶ DEFINING SPORT: CONCEPTIONS AND BORDERLINES 137, (Shawn E. Klein eds., 2016).

²⁴⁷ Sebastien Foucan (@sebroucan), FACEBOOK (May 21, 2017, 2:20 PM), https://www.facebook.com/permalink.php?story_fbid=437455053284680&id=100010605671158.

²⁴⁸ DEFINING SPORT: CONCEPTIONS AND BORDERLINES 139, (Shawn E. Klein eds., 2016).

While some of those communities thrive, those that do not have little recourse against IOC or the IOC-recognized international federation they seek to challenge. A revision in the Olympic Charter to require a more transparent decision-making process, complete with due process considerations could provide a means of relief for these organizations unrecognized by the IOC.