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# LEGAL ASPECTS OF A UNITED STATES FOREIGN SPORTS POLICY

*James A.R. Nafziger\**

## I. INTRODUCTION

The father of the modern Olympic Games, Baron Pierre de Coubertin, envisaged international athletic exchange as the "free trade of the future."<sup>1</sup> No nation would regulate this trade to its political advantage. The Olympic Games, as well as other international political arenas, would be unpolluted by political currents. To a remarkable extent, considering the course of twentieth century history, these aspirations have been met.<sup>2</sup> But athletic exchange, like other forms of human interaction, nevertheless remains exposed to sovereign intervention; a measure of politics is inevitable in any transnational activity, whether in the United Nations or a global convention of medieval musicologists.<sup>3</sup> Effective management of any transnational human activity is, therefore, a matter of regulating rather than eliminating political intervention. Within the nation-state system, such regulation depends heavily upon harmonious laws and policies of participating governments.

National sports laws and policies vary in scope and kind. Governmental support of athletic programs and exchange is all but universal, ranging from the employment by Scandinavian governments of cross-country skiing competitors and border guards to the

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1. P. COUBERTIN, *UNE CAMPAGNE DE VINGT ET UN ANS 1887-1908* 90 (1908). Coubertin's statement, made during the Sorbonne Conference of November 25, 1892, not surprisingly was met by indifference and misunderstanding. See Lucas, *Olympic Genesis: The Sorbonne Conferences of 1892 and 1894*, 85-86 *OLYMPIC REV.* 607 (1974).

2. See J. MEYNAUD, *SPORT ET POLITIQUE* (1966) [hereinafter cited as MEYNAUD].

3. Note two recent statements by Lord Killanin, President of the International Olympic Committee (IOC): "It is not possible to divorce sport and politics, but it must be possible to protect sport from political exploitation . . ." Address by Lord Killanin, Official Opening of the 75th Session of the IOC, Oct. 21, 1974, in 85-86 *OLYMPIC REV.* 572, 573 (1974); "It is inevitable that . . . sport must be affected by politics." Address by Lord Killanin, Winnipeg, Canada, Nov. 1, 1974, *Id.* at 579.

massive programs of national aggrandizement exemplified by those of the People's Republic of China<sup>4</sup> and East Germany. The "college-bonus" system of support is used in the United States, and the "cash-bonus" and pervasive military service system is employed by the Soviet Union.<sup>5</sup> Rule 26 of the Olympic Games, which governs the important question of "amateur" status, was recently reformed after years of controversy to respond to the trend away from rigid amateurism.<sup>6</sup> Rewritten Rule 26, and more particularly its implementing by-laws, offers greater opportunity for governmental assistance to amateur Olympic aspirants. Such governmental support presupposes the efficacy of keeping the home folks happy while impressing one's neighbors by setting a world record on some foreign athletic track. After all, the theory goes, athletic competition offers a relatively inexpensive and humane way of flexing the national muscles; presumably, athletic prowess serves the national interest.<sup>7</sup>

Whether, and if so how, international athletic success serves the national interest, are questions of considerable importance to the United States Government as it considers whether it should exercise greater legal control over amateur athletics. Indeed, insofar as amateur sport involves international exchange, should this country further develop a foreign sports policy?<sup>8</sup> To do so might seem on first impression to require this country not only to modify its traditional *laissez-faire* approach toward participation by its nationals

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4. See, e.g., 41 SPORTS ILLUSTRATED, Sept. 16, 1974, at 32.

5. See, e.g., Washburn, *Soviet Amateur Athlete: A Real Pro*, N.Y. Times, July 21, 1974, § 5, at 2, col. 4.

6. The rewritten eligibility rule, in contrast to its complicated predecessor, simply requires Olympic competitors never to have received "financial rewards or material benefits" from sport, and to abide by the rules of their international sports federations. 85-86 OLYMPIC REV. 585 (1974). See also N.Y. Times, Oct. 22, 1974, at 51, col. 8.

7. There is considerable evidence that it does. See, e.g., MEYNAUD, *supra* note 2; H. MORTON, *SOVIET SPORT* (1963); S. SIENIARSKI, *SPORT IN POLAND* (1972). Aside from the most obvious examples of sovereign intervention in sports, evidence of the apparent importance attached to a national identification with athletic competition may be seen in the periodic contests among national proposals for the site of forthcoming Olympic Games. The time and money expended on the concomitant lobbying and public relations effort is staggering. See Washington Post, Oct. 23, 1974, § D, at 7, cols. 3, 4-5.

8. The Department of State has convened two non-governmental conferences in order to elicit opinion on this subject—the Round-Table Conference on International Athletic Exchanges (May 22, 1972), and the Symposium on Sport and the Means of Elevating International Understanding (Dec. 4, 1973).

in transnational sports, but also to reinterpret the free-trade vision of Baron de Coubertin, the Olympic Rules,<sup>9</sup> and other *Grundnorms* of sports, so as to rationalize a seemingly further politicization of the athletic arena.

The times do not generally favor entry by the United States Government into a new arena of potential international conflict, especially one created for its own sake, such as sports competition.<sup>10</sup> But sport is no longer simply isolated, private activity; it is now a popular movement. Not only are governments and politics involved in sports, but governments harness the popularity of sports activities for diplomatic purposes.<sup>11</sup> Moreover, the spectacu-

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9. Insofar as a foreign sports policy would reach Olympic participation, as it almost certainly would, Rule 25 of the Olympics is directly implicated:

National Olympic Committees must be completely independent and autonomous and must resist all political, religious or commercial pressure.

National Olympic Committees that do not conform to the Rules and Regulations of the International Olympic Committee forfeit their recognition and consequently their right to send participants to the Olympic Games.

Rule 8 also declares that "the Games are contests between individuals and not between countries or areas." INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC RULES AND REGULATIONS (1972).

10. Public and professional opinion on this subject is ambiguous. A 1971 sampling of 44 sports administrators, government administrators, sports commentators, government observers, and sports participants revealed mixed attitudes towards expansion of the government's role in sports including federal financial support for sports and, indeed, the efficacy of a sports policy; most of those surveyed did, however, agree on the need to keep "politics" aloof from sports and to improve the program administered by the Department of State. HARRIS/RAGAN MANAGEMENT CORPORATION, INTERNATIONAL SPORTS POLICIES FOR THE DEPARTMENT OF STATE: A PRESENTATION OF OPTIONS 25 (unpublished, Sept. 24, 1971) [hereinafter cited as HARRIS/RAGAN REPORT]. Bearing in mind that this survey was taken prior to the the Munich Olympic Games and the demise of plans for the Denver Winter Games, arguably today the public would be more inclined to accept, or even call for, a more active governmental role in sports. A Harris Sports Survey taken after Munich disclosed considerable public disenchantment with the administration, and particularly with the rule enforcement of international competition, and indicated considerable public support for official protection by the government of U.S. interests in the Games. *Sports Fans Assess '72 Olympics*, in THE HARRIS SURVEY (Oct. 5, 1972).

11. The press has frequently reported on international politics in sports. *E.g.*, N.Y. Times, Oct. 25, 1974, at 49, col. 4; Washington Post, Oct. 30, 1974, § F, at 1, col. 8 (refusal of India to participate against South Africa in Davis Cup competition); Washington Post, Feb. 7, 1975, § A, at 14, col. 1; and 42 SPORTS ILLUSTRATED, Feb. 24, 1975, at 18 (refusal of India, contrary to commitment, to allow participation by South Africa and Israel in world table tennis championships held in Calcutta, together with simultaneous invitation of participation to

lar expansions in media coverage of transnational athletic competition brought all the glory, humanity, organization, administrative bungles, and ultimate horror of the 1972 Games in Munich into the United States living room so graphically as to firmly establish, if it was not already, the important role of sports in public international affairs. The involvement of this country's athletes in global competition is now of major public interest, if not concern. With Munich behind, we wrestle with such questions as the freedom of United States athletes to compete against both white and racially mixed teams of Rhodesians and South Africans. Answers to such questions cannot arise strictly from the private sector, for they relate to substantial matters of foreign and civil rights policy. If, then, sports competition is inextricably entangled in a burgeoning popular movement and in politics, it may be time for the adoption of some further policy to guide participation by United States nationals in transnational sports.

Within a transnational setting, the relationships between "nationalism and sports" and between "politics and sports" historically have been viewed in this country as disjunctive. Until recently, any official United States intervention into transnational athletic exchange has been regarded adversely. Now, however, with an emerging Realpolitik recognition of the inevitability of governmental involvement in sports, and even its peace-making merit, it is important to distinguish among the levels of such possible involvement:

Level I—simple governmental financial assistance, either by direct appropriations, use of revenue from governmental lotteries, or other means. Such assistance is not only acceptable, but encouraged, as an international practice;<sup>12</sup>

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the Palestinian Liberation Organization). Indian teams in particular appear to be "guided by the rules and regulations of the State." *Washington Post*, Feb. 7, 1975, § A, at 14, cols. 1, 5; *Washington Post*, March 20, 1975, § E, at 4, col. 5 (refusal of the Mexican Government to grant visas to South African Davis Cup tennis team to play in Mexico and directive to Mexicans not to compete with South Africans elsewhere); 42 *SPORTS ILLUSTRATED* May 12, 1975 at 15 (same, with respect to World Championship Tennis Competition in Mexico); *Washington Post*, May 7, 1975, § D, at 2, col. 3 (French exclusion of Rhodesian tennis team). On the politicization of the International Chess Federation see *Oregonian*, March 20, 1975, § A, at 10, col. 1 (on rule-changing proposals by the United States Chess Federation: "The voting Wednesday went generally by blocs, with East and West European and Arab federations siding with the Russians, and Asian and Latin American federations lining up with the United States.")

12. The IOC favors governmental assistance to amateur sport, so long as it is

Level II—direct governmental supervision and control over the administration of domestic sport, a widespread practice which is at least symbolized, if not manifested, in some countries by a cabinet-level Minister of Sports;

Level III—diplomatic exploitation of sports in the external affairs of the government.

A United States foreign sports policy might exist at any or all three levels of governmental involvement. This article however, will be concerned primarily with the special problems related to the possibility of United States involvement in sports at Level III.

## II. CURRENT UNITED STATES GOVERNMENTAL INVOLVEMENT IN SPORTS

The current involvement of the United States Government in sports activity is modest and generally free of comprehensive policy restraint. Already discernable, however, are the outline of a domestic sports policy that bears some incidental transboundary implications, and certain international policies identified primarily with a facilitative program administered on a shoestring budget by the Department of State. This article will briefly examine each of these.

### A. Domestic Involvement

Domestic sports policy<sup>13</sup> barely qualifies as such, but one can discern a pattern of involvement at Levels I and II that includes oligopolistic protection from antitrust laws for baseball (but generally not for other sports); congressional chartering of the United States Olympic Committee (with indirect transnational implications); laws and regulations governing the broadcasting and tele-

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confined to financial and "non-political" support of programs. Lord Killanin, President of the IOC recently expressed his gratification "to see how much Governments are encouraging the development of sport in their countries and with a few exceptions they have given their support without any political ties. I cannot over-emphasize the importance and desirability of Government aid, and reconfirm the dangers of Government interference of a political nature in the running of sport in any country." 84 OLYMPIC REV. 490 (1974). See also, Letter from Lord Killanin to President Gerald Ford, in 41 SPORTS ILLUSTRATED, Sept. 2, 1974, at 12.

13. See generally Weistart, *Athletics*, 38 LAW & CONTEMP. PROB. (1973); Koppett, *Sports and the Law: An Overview*, 18 N.Y.L.F. 815 (1973); Hochberg, *Second and Goal to Go: The Legislative Attack in the 92nd Congress on Sports Broadcasting Practices*, 18 N.Y.L.F. 841 (1973); Samuels, *Legalization of Gambling on Sports Events*, 18 N.Y.L.F. 897 (1973); Carolson, *The Business of Professional Sports: A Reexamination in Progress*, 18 N.Y.L.F. 915 (1973).

vising of sports; allocations of military security appropriations for sports in the armed services; support of a Sports Corps within ACTION; state and local governmental support of physical education and individual athletes; and a growing presidential role, which until recently was limited to presiding over the Council on Physical Fitness and, of course, when politically feasible, tossing out a baseball on opening day.

Recently, by executive order, the President established an *ad hoc* 18-member Commission on Olympic Sports.<sup>14</sup> Its purpose is, partly through hearings, to study the United States Olympic Committee (USOC) on a sport-by-sport basis, examine allegations of mismanagement by the USOC of its responsibilities during the 1972 Olympic Games,<sup>15</sup> determine factors which impede or tend to impede the United States from fielding its best amateur athletes in transnational competition, and study measures for financing and otherwise assuring more effective United States participation in the Olympics. The Commission is charged with the responsibility of submitting two reports of findings and recommendations to the President.

As against these few instances of governmental involvement in sports, passage of the proposed Amateur Athletic Act<sup>16</sup> would be of profound significance. The Act is designed to strengthen United States athletic activity and programs at home and abroad, and to settle disputes between competing amateur sports organizations,<sup>17</sup>

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14. Exec. Order No. 11868, 3 C.F.R. 26,255 (Supp. 1975). See Washington Post, June 20, 1975, § D, at 1, col. 1. Cf., Olympic Sports Commission Act of 1974, S. 1018, 93d Cong., 2d Sess. (1974); H.R. 15241, 93d Cong., 2d Sess. (1974).

15. For details of these allegations see Scannell, note 18 *infra*; Scannell, '76 *Montreal Olympics Could Be Another Munich*, Washington Post, Oct. 23, 1974, § D, at 1, col. 1.

16. Amateur Athletic Act of 1974, S. 3500, 93d Cong., 2d Sess. (1974). Cf. H.R. 10190, 93d Cong., 1st Sess. (1973).

17. Primarily the "infuriating fratricidal feuding" between the Amateur Athletic Union (AAU) and the National Collegiate Athletic Association (NCAA), which have engaged for seventy years in jurisdictional warfare that has jeopardized both individual athletes and the representation of this country in international competition. For a succinct history of this dispute see 120 CONG. REC. 58,780 (daily ed. May 21, 1974) (remarks of Senator Pearson). Cf. Koch, *A Troubled Cartel: The NCAA*, 38 LAW & CONTEMP. PROB. 135 (1973). The probable effect of the proposed Act on this dispute has been summarized as follows:

Ostensibly, the bill cuts the power of the AAU off at the knees by limiting the number of sports that can be controlled by a single organization to one (or at the most three when it can be demonstrated that the other two would benefit from common administration). Right now the AAU governs 11 inter-

which are apparently immune to internal, private reform.<sup>18</sup> Actually, two proposals were introduced unsuccessfully in the 93rd Congress and will likely be put before the 94th Congress. The first proposal, with several variations, would refer all internal jurisdictional disputes to the American Arbitration Association.<sup>19</sup> An alternative proposal—the Amateur Athletic Act—is more far-reaching and controversial. It would create a five-member, independent United States Sports Board, one member of which must be an amateur athlete, with broad authority to issue and revoke charters of sanctioning bodies for athletic competition, subject both to the Board's regulations and court review. Each chartered body would govern at least one, and up to three, sports, if the other two could benefit from common administration. This second bill contained an earlier provision, later eliminated, to create a national sports development foundation to enrich and enlarge amateur athletics in this country.

### B. *Transnational Involvement*

The scope of the proposed Amateur Athletic Act is explicitly international. Indeed, it is illuminating to note that of four "findings" articulated in Section 101 of the Act, two are explicitly and one implicitly addressed to world order and foreign commerce considerations. The international implications of the Act are underscored by the serious reservations toward it which have been expressed by the International Olympic Committee,<sup>20</sup> presumably

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national sports and has voting control over all 26 sports that come within the purview of the U.S. Olympic Committee.

Under the terms of the bill, the status of the NCAA is unaltered except in one important respect—it cannot arbitrarily prohibit athletes from competing in open events. Such prohibitions have been the NCAA's primary weapon in its long power struggle with the AAU. 41 *SPORTS ILLUSTRATED*, July 22, 1974, at 14.

18. A proposal for structural reform of the AAU has been rejected by its leadership. The reform would entail the election of AAU directors, not at-large according to current practice, but by the individual sports committees which would be recognized by the United States Olympic Committee (USOC) independently of the AAU itself. Scannell, *IOC Shambles Through the 1976 Olympic Countdown*, Washington Post, Oct. 24, 1974, § D, at 1, col. 1.

19. *E.g.*, S. 3273, 93d Cong., 2d Sess. (1974).

20. IOC President, Lord Killanin, publicly remarked that "the legislation in the Tunney Act—I have heard different versions—is implemented with a board of five people, then the U.S. would risk putting itself not only out of the Olympic movement but also out of the international federations. There is much to be done in this country to improve sport and develop sport. Most of us are fed up reading

under rule 25 of the Olympic Rules and Regulations.<sup>21</sup>

Even without the Act, politics color United States athletic participation in international competition and other forms of exchange. All levels of the government may be called upon to support the convening of transnational competition in this country. The role of the public taxpayer in this support became poignantly clear when Denver voters rescinded an invitation to hold the 1976 Winter Games there. The international ramifications of governmental support of military participation in international shooting and swimming meets and the extraterritorial effect given to United States antitrust laws governing professional sports not only in the United States but in Canada exemplify political involvement. *San Francisco Seals, Ltd. v. National Hockey League* (NHL),<sup>22</sup> for example, considered the antitrust implications of an NHL refusal to grant the plaintiff a franchise in Vancouver, British Columbia. The court noted in dicta that major-league professional hockey extending to Canada was subject to federal antitrust laws and that the relevant geographical market for professional hockey before live audiences, under sections 1 and 2 of the Sherman Act,<sup>23</sup> encompassed the United States and Canada. The court concluded that territorial restraints imposed by the NHL did not restrain trade or commerce within the language of the Sherman Act. But such international ramifications of domestic laws and policy are of little significance.

Of greater significance to a discussion of United States foreign sports policy is the program administered by the Department of State to facilitate athletic exchange. That program includes sponsorship and administration of visits by foreign sports administrators and an outbound program consisting of 10-20 coaches a year, a small number of outstanding athletes to conduct demonstrations, several teachers of sports organization and administration,

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about rows between the AAU and NCAA. The strong likelihood of a presidential commission on sport is a healthy sign." *Washington Post*, Feb. 23, 1974, § C, at 1, col. 5; in a later letter to President Ford, Lord Killanin wrote that "S-3500 would violate the I.O.C. rules." 41 *SPORTS ILLUSTRATED*, Sept. 2, 1974, at 12.

21. See note 9 *supra*. However, the chartering of the United States Olympic Committee evidences governmental intervention which, though minimal, has been acceptable to the IOC. Because of its acceptance of such governmental intervention in national committees, the IOC may be estopped from challenge, under the Olympic Rules, of greater United States legal control over the operations and structure of the USOC.

22. 379 F. Supp. 966 (C.D. Cal. 1974).

23. 15 U.S.C. §§ 1, 2 (1971).

and a few teams to participate in goodwill tours. Between 1952 and 1973, 531 coaches and 117 teams were sent abroad. The Department of State also provides seed money to enable select organizations to raise private funds to carry out their programs more effectively, and assists athletes and coaches with briefings and other diplomatic support while they are abroad.<sup>24</sup>

### III. PRELIMINARY LEGAL ASPECTS OF A UNITED STATES FOREIGN SPORTS POLICY

Let us return to the central question, "What are the salient legal aspects of a United States foreign sports policy?" More broadly stated, what, if any, are the authoritative restraints on the achievement by the United States Government of all levels, particularly Level III, of political involvement in transnational athletic exchange?

#### A. *Domestic Law*

As a matter of domestic law, the executive branch of the federal government may, under the foreign relations power<sup>25</sup> or under delegated congressional authority,<sup>26</sup> employ amateur athletics as another tool of foreign policy. Passage of the Amateur Athletic Act would offer the executive branch appointive and supervisory discretion of a sort that would at least indirectly bear foreign policy considerations. More ambitious extensions of the foreign relations powers to athletic competition invite questions not of domestic law, but of transnational law and of domestic political efficacy and feasibility, as defined by a formulation of the "national interest."

#### B. *Minimal Options and Authoritative Objectives Within the National Interest*

The national interest underlying current United States international sports programs "is in furthering mutual understanding and

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24. See transcript of the speech delivered by Alan A. Reich, Deputy Assistant Secretary of State for Educational and Cultural Affairs, before the General Assembly of International Sports Federations, in 119 CONG. REC. 95 (daily ed. June 19, 1973); remarks of Walter Boehm, in R. SINGER, MULTIDISCIPLINARY SYMPOSIUM ON SPORT AND THE MEANS OF FURTHERING MUTUAL INTERNATIONAL UNDERSTANDING (U.S. Dep't of State, Bureau of Educational and Cultural Affairs, Dec. 4, 1973) (1974).

25. U.S. CONST. art. II, §§ 1-3.

26. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

communication through sports."<sup>27</sup> Accordingly, the government has strengthened its role in sports by committing further resources to facilitate people-to-people communication and public diplomacy conducted by private individuals and groups.<sup>28</sup> It is accepted that transnational athletic exchange has served as a useful symbol, signal, and catalyst for the improvement of a nation-state's international relations. Moreover, even limited athletic exchange serves to make those relations less artificial and more socially anchored.

A study undertaken for the Department of State in 1971, which observed that "sports has largely been ignored"<sup>29</sup> by Foggy Bottom, identified four reasons for this deficiency<sup>30</sup> and suggested two options in addition to the present one of facilitation:

- (1) As an active *promoter* the Department would work to increase the stature of United States participation in international sports programs as a primary means of achieving the objectives of the Fulbright-Hays Act;
- (2) Alternatively, the Department could become a *programmer* of United States participation in international sports, viewing sports as a foreign affairs resource which, when balanced with other such resources, might be important to the achievement of foreign policy objectives.<sup>31</sup>

The study recommended that the government's choice between these options be made by balancing the attendant risks and benefits. As to risks, the facilitative role seemed the safest; the promoter role, though more attractive, was riskier as it depends upon sufficient funding; the programmer role seemed even riskier, as foreign affairs officials might deny its usefulness and the participants themselves might disparage its political implications. As to benefits, the promoter and programmer roles offered greater assurance of effective participation in international competition where the United States has been poorly represented in the past; and the programmer role would recharacterize the government as a consumer rather than a handmaiden of sports activities, and would,

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27. See note 24 *supra*.

28. See Reich, *New Role for Associations in Promoting World Understanding*, ASS'N MANAGEMENT, Feb. 1973, at 32.

29. HARRIS/RAGAN REPORT, *supra* note 10, at 2.

30. Identified as these:

Sports are said to have negligible impact on international relations; sports are believed to be too ephemeral; sports apparently would lose their purity if tied more closely to U.S. international interests; sports are thought to appeal generally to baser tastes . . . . *Id.*

31. HARRIS/RAGAN REPORT, *supra* note 10, at 7.

therefore, tend to recharacterize the overall role of sports in domestic social life.<sup>32</sup> In considering which option to pursue, the study concluded that "the Department must first decide the objective of its sports activities and have a cogent plan for achieving that objective before very strong feelings, either way, emerge."<sup>33</sup>

The State Department's Bureau of Educational and Cultural Affairs seeks to achieve three objectives: (a) to enlarge the circle of those able to serve as influential interpreters between this and other nations; (b) to stimulate institutional development in directions which favorably affect mutual comprehension; and (c) to reduce structural and technical impediments to the exchange of ideas and information.<sup>34</sup> Within this framework, the Bureau has conducted a limited program of facilitating athletic exchange, while eschewing direct sponsorship of athletic exchange.<sup>35</sup> No definitive policy can be drawn from these broadly stated objectives.

Were the facilitative role of the State Department's Bureau of Educational and Cultural Affairs expanded, so would be its implications for United States foreign policy. But whatever the role to be performed by the Bureau, the increased capacity and current use of sport as a diplomatic tool suggest the importance of a more operational statement of objectives—indeed, of a comprehensive foreign sports policy. For instance, when, for foreign policy reasons, State X is boycotted by States Y and Z, how should United States participants respond? How, if at all, should the Government for-

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32. *Id.* at 25-26. Criteria for judging the efficacy of a United States foreign sports effort under the auspices of the State Department will vary according to the intensity of governmental involvement. Low-level policies will be concerned with more or less immediate returns on each dollar invested. For example: what works at a clinic in a particular country? What doesn't? Should we have sent the Kansas basketball coach to Mauretania after his visit in Dakar? If the government sees itself as a facilitator, the exposure which the United States receives and the contacts which the activity generates will be critical at this low level of policy. If, however, the government's role extends to that of a promoter or programmer, then the success of its athletes in competition abroad, the degree to which a foreign country adopts a newly introduced American sport, or the accomplishment of some other major objective, will dominate our evaluation of governmental performance.

33. *Id.* at 28.

34. U.S. DEP'T OF STATE, BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, THE CU PROGRAM CONCEPT (Oct. 1, 1973).

35. See, e.g., U.S. DEP'T OF STATE, REPORT OF ROUND-TABLE CONFERENCE ON INTERNATIONAL ATHLETIC EXCHANGES 4 (May 22, 1973) (reference to a successful program of the Partners of the Americas). See Moes, *Inter-American Program: Building Good Sportsmen*, Washington Post, Oct. 14, 1972, § D, at 14, col. 5.

mally respond? Should United States teams be advised against engaging in competition against teams of states, or indeed, liberation movements, which the government does not recognize? Such questions abound.

It is in the United States' interest to resolve such questions coherently and consistently. It is time for a foreign sports policy transcending the sporadic and incidental governmental intervention and the facilitative activities of the Bureau of Cultural and Educational Affairs. A comprehensive national policy could be largely shaped by such transnational bodies as the International Olympic Committee and its 26 constituent sports federations.

#### IV. TOWARD AN AUTHORITATIVE PROCESS TO SHAPE UNITED STATES POLICY

##### A. *A Unilateral Framework: Its Pitfalls*

Should the United States Government look upon sport simply as a diplomatic tool to serve the exigencies of the times, or perhaps more generously as a tool for unilateral promotion of world order? Either perspective is deficient because of the degree of ambiguity and complexity inherent in unilateral decisions and policy. It would be ill-advised for the United States any longer to "go it alone." Although athletic exchanges organized by the United States do generate some good will, there is little agreement on the efficacy of sports as an instrument of world order.<sup>36</sup> The ritual or cathartic role of sports as an agent in conflict resolution, or as a socializing model for the development of self-control, seems to be ambiguous. Considered globally, the cultural contexts and the athletic activities themselves are apparently too diverse to permit any useful conclusions, unless simply that sport represents a microcosm of human society—to recall Baron de Coubertin's metaphor, trade in sports, like material goods, will neither save the world nor, by itself, further threaten world order.

To add to the uncertainty and complexity of unilateral decision-making, sport operates in different ways in different contexts. National athletic interests differ.<sup>37</sup> Individuals may be culturally con-

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36. The relevant socio-psychological and philosophical literature is voluminous. See, e.g., Slusher, *Sport: A Philosophical Perspective*, 38 *LAW & CONTEMP. PROB.* 129 (1973); Nafziger, *The Regulation of Transnational Sports Competition: Down from Mount Olympus*, 5 *VAND. J. TRANSNAT'L L.* 180, 181 nn.3-4, 182 nn.6-8, 183 n.10 (1971).

37. For instance, note the summary of responses from United States Embas-

ditioned to participate actively or passively for a variety of diverse reasons: for aesthetic pleasure related to the beauty of controlled body movement, for dramatics and strategy-interplay, for the sheer excitement of competition, for the thrill of physical exertion or even violence within the rules, or for the experience of learning. The controlling perspectives will depend on the sport, the age, sex, and other characteristics of the participants, the level and intensity of competition, the type of exchange, and, most importantly, the cultural context. A few examples of divergent perspectives may be useful. Current evidence suggests that the interest of the People's Republic of China in participation in international competition is prompted by the desire for friendship, to learn good techniques, and only peripherally to vanquish competition.<sup>38</sup> The exquisite manner in which the Chinese have conducted "ping-pong diplomacy," involving a careful selection of team members on a par with foreign visitors but capable of rewarding competition with friendship and new skills, testifies to this distinctive perspective.<sup>39</sup> In parts of the Middle East and Middle Asia, participation in sports is overwhelmingly limited to men and quite frequently to the military, the affluent, and the professional elite. In Africa, contemporary nation-building sensitivities may be so strong as to preclude bilateral competition with United States athletes; in Eastern Europe, competition may be the only avenue of athletic communication; and so on.

Therefore if the United States is to adopt a unilateral role in world athletic exchange, it must deftly unravel a plethora of factors that will affect administrative decision-making in a particular political/cultural situation. This may be too much to expect. Thus, given our limited resources of time and administration, there appears to be a clear need to develop more comprehensive, overreaching policies to organize decision-making over the long haul. Because it seems clear that we shall have to make a variety of decisions related to the participation of our nation in transnational sports, a coherent foreign sports policy would be greatly assisted by recourse to international norms and rules.

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sies as to national athletic interests in respect of United States assistance. REPORT OF ROUND-TABLE CONFERENCE, *supra* note 35, at B1.

38. See, e.g., Johnson, *Faces on a New China Scroll*, 39 SPORTS ILLUSTRATED, Sept. 24, 1973, at 86; Underwood, *And the Yu-I Flowed Like Wine*, 42 SPORTS ILLUSTRATED, June 2, 1975, at 24.

39. See Nafziger, *supra* note 36, at 205.

### B. *A Multilateral Framework: Its Promise*

A purely unilateral framework is clearly inadequate to guide decision-making if sport is regarded not simply as an activator and amplifier of international discourse and rapport, but, more ambitiously, as a means of managing crises, accommodating social change and, in general, improving the lot of man. To elevate sport to a policy level that entails these latter considerations is not premature; the fact is that sports "are there" already. High-level United States-Canadian security planning to combat the terrorist threat to the 1976 Montreal Games that crippled the 1972 Munich Games underscores the political vitality of transnational sports competition.<sup>40</sup> Quite often sports activity has operated to mitigate international tension in more important contexts—United States relations with the Soviet Union and the Peoples Republic of China, and perhaps soon with Cuba—and those in which the artificial conflict of sport has itself directly generated further conflict—Central American soccer skirmishes. Sport has encouraged recognition of governments—East Germany and China—and it has encouraged social progress, if only gradually and spasmodically—South Africa<sup>41</sup> and the Soviet Union.<sup>42</sup> Policies of communication and cooperation seem preferable to those of confrontation.

The Kheel Commission, which attempted unsuccessfully to resolve the dispute between the Amateur Athletic Union and the National Collegiate Athletic Association, emphasized the importance of United States adherence to international rules in its involvement in international sports.<sup>43</sup> Since those international rules are becoming better articulated, better understood, and more authoritative, adherence will be simpler. In this development, the Olympic Movement is by far the leading instrumentality. The installation of Lord Killanin as President of the International Olympic Committee (IOC) has brought a growing appreciation within the Olympic Movement of the need not only for reform of the nature of the Games, but for the strengthening of commitments to an open, precedent-based process of decision-making to

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40. See *Washington Post*, May 12, 1974, § D, at 10, col. 1.

41. See, e.g., *Washington Post*, Oct. 29, 1974, § A, at 19, col. 1.

42. "There are even reports from diplomatic sources in Geneva that the Soviet Union has softened its stand on human freedom issues at the European security conference to demonstrate there will be freedom of movement for everyone at the Olympics, should it be awarded them." *N.Y. Times*, Oct. 20, 1974, § 5, at 3, col. 5.

43. See S. Rep. No. 93-380, 93d Cong., 1st Sess. (1973).

afford an enlarged measure of predictability to constituent federations and, most importantly, to individual teams and athletes. Especially since its 1973 Varna Congress—and no doubt haunted by remembrances of Munich terrorism—the IOC has sought to operationalize its accepted peacemaking role.<sup>44</sup>

Rule 3, the *Grundnorm* of the Olympic Rules and Regulations, recites a realistic and empirically justifiable statement of organizational aims:

. . . to promote the development of those fine physical and moral qualities which are the basis of amateur sport and to bring together the athletes of the world in a great quadrennial festival of sports thereby creating international respect and goodwill and thus helping to construct a better and more peaceful world.

The detailed Rules and Regulations define the Olympic Movement as an institution and serve externally to define more pervasive norms related to transnational athletic exchange. Without attempting to describe and analyze the legal aspects of the Movement, it suffices here to note two recent instances by which nettlesome questions of foreign affairs have been resolved by explicit procedures and decision-making under the Rules.

1. Diplomatic recognition is often a thorny problem for international non-governmental organizations.<sup>45</sup> China's ping-pong diplomacy presented a recent challenge to the skill of IOC decision-makers. Responding to this challenge in meticulous accordance with its Rules,<sup>46</sup> the IOC moved from a distinctly hostile position towards the People's Republic of China to one of gradual inclusiveness.<sup>47</sup> The new position has in turn engendered a pattern of invita-

44. See, for example, the recent statement of Lord Killanin, President of the IOC, that, "Whilst the motto of the IOC is '*Citius, Altius, Fortius*', there is no doubt that the demonstration of good-will shown at the Varna Congress and subsequently confirms that there is a subsidiary motto—'Sport for a World of Peace.'" 84 OLYMPIC REV. 490 (1974).

45. Newly adopted Olympic Rule 25 provides that "[r]ecognition of an NOC [National Olympic Committee] in a country does not imply political recognition of that country. Recognition of an NOC is dependent on that country having enjoyed a stable government for a reasonable period of time."

46. See Closing Speech of Lord Killanin, 1973 Olympic Congress in Varna, Bulgaria, in 72-73 OLYMPIC REV. 471, 473 (1973).

47. See, e.g., Washington Post, Feb. 15, 1974, § D, at 8 (initial exclusion of the People's Republic of China by the International Amateur Athletic Federation (IAAF) from track-and-field participation in the 1974 Asian Games); Washington Post, June 12, 1974, § D, at 6, col. 1 (vote by the International Football Federation (FIFA) against Chinese membership); 41 SPORTS ILLUSTRATED, Oct. 21, 1974, at

tion and response throughout the transnational sports arena.

2. Another recognition problem is that of Rhodesia, the credentials of whose athletes were rejected by the IOC at the last minute prior to the opening of the 1972 Olympic Games.<sup>48</sup> Debate persists whether, in protecting fundamental human rights, it is more con-

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18 (membership vote by the International Volleyball Federation to replace Taiwan by the People's Republic of China). The evolution of the People's Republic of China's readmission into the global sports arena is fascinating. In 1958, the People's Republic withdrew from all international athletic federations. With the exception of a few exhibition tours, principally of its table tennis team, China was isolated from transnational competition until 1974. The 1974 Asian Games provided a major boost to renewed involvement by the People's Republic in transnational competition. An excellent account of the politics involved in the invitation to the People's Republic of China appears in Putnam, *A Great Plung Forward for China*, 41 *SPORTS ILLUSTRATED*, Sept. 16, 1974, at 33:

[w]hen the Iranians were awarded the Asian Games for 1974, they made it clear that they wanted the People's Republic, not Taiwan, to represent China. By an overwhelming margin, the Asian Games Federation agreed, threw out the Taiwanese and invited the mainlanders to replace them. The International Olympic Committee, which has a long history of supporting Chiang Kai-Shek at the expense of all the Chinese athletes who do not live on his island, threatened to withdraw its sanction for the Asian Games. Numerous federations said they would boycott the Games and the generalissimo sulked.

Undaunted by the threats, the Iranians began quiet negotiations with IOC members, who finally agreed to approve the Games if the federations of the various sports would go along with the new China policy. After more negotiations, the federations slowly began unloading Taiwan to make room for the People's Republic. FINA, the federation that controls swimming, diving and water polo, proved the toughest group to crack. The mainland Chinese applied for membership, but stipulated that if Taiwan was not ousted from FINA, the federation could forget their application. By a two-vote margin, the 30 members of FINA's executive committee voted to forget it. Following 11th-hour negotiations with FINA President Dr. Harold Henning of the United States, the Chinese dropped the offending clause from their application, and the day before the Asian Games opened approval was granted for them to participate in the water-sports events as nonmembers.

In its statement on the matter, which foreshadowed its newly formulated position toward the People's Republic of China, the IOC stated that it ". . . deplore[d] the fact that the Asian Games Federation ha[d] decided not to invite one of the recognized NOC's, which was a member of the Asian Games Federation."

Nevertheless, noting precedent, and "[i]n view of these facts, it has been decided unanimously that in the interests of the development of sport in Asia, the IOC should continue to give its recognition and patronage to the Asian Games Federation, which automatically goes to the Games." 76-77 *OLYMPIC REV.* 103 (1974).

48. See Nafziger, *On the Rules of the Games*, 70-71 *OLYMPIC REV.* 449, 451 (1973). More recently, the IOC voted to exclude Rhodesia from the 1976 Games.

structive to involve or bar nationals of wayward countries. Clearly, despite the concomitant tension, the ongoing diplomatic and international organizational effort to employ sports competition as a means of eliminating state-sanctioned racial cleavage in Rhodesia and South Africa has worked better than other techniques;<sup>49</sup> and these efforts can be made to work without self-detriment to the competition itself so long as political pressures are either sublimated or expressed in accordance with well-articulated rules and principles, as they regrettably were not in the instance of the IOC decisions to bar Rhodesian participation in the Munich and Montreal Games. These decisions were particularly ironic because Rhodesian teams are racially mixed.<sup>50</sup> Moreover, in the instance of the decision to bar Rhodesia from the 1976 Games, the IOC declined to follow the recommendations of its own three-man investigatory commission on the status of the Rhodesian National Olympic Committee (RNOC).

On February 11, 1975, the IOC issued the report of the Commission (consisting of a Brazilian, a Canadian and a Pakistani), which determined that Rhodesia was a geographical and political entity and that it was therefore competent to confer citizenship and issue passports. The Commission recognized that a restrictive *de facto* discrimination, particularly in educational development, existed in Rhodesia, but it concluded that the constitution and the rules and practices of the RNOC were neither racially discriminatory nor violative of IOC rules. Moreover, the RNOC was deemed inde-

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U.N. Press Release, WS/715, at 3 (June 20, 1975) (noting approval of the decision by the Security Council Committee on Sanctions against Southern Rhodesia).

49. See Nafziger, *supra* note 36, at 207. For a more detailed history and analysis of the interrelationship between sport and *apartheid* in South Africa see Lapchick, *South Africa's Use of Sport in Foreign Policy and the International Response*, March 23, 1974 (unpublished paper presented at the 15th Annual Convention, International Studies Association). Note in particular the concluding paragraph of that paper: "As long as this is true, South Africa's international critics will continue to attack the government through the field of sports. The essence of that attack was summed up in an editorial in the Johannesburg Sunday Times on May 31, 1970, shortly after the IOC decision:

South Africa's critics have simply discovered that sport is the most useful weapon they have yet found with which to beat us and while it is the sportsmen who are the sacrificial victims—they are being ostracized and deprived of the right to participate in world sport—the main target of attack is the racial policy of South Africa, or, to put it more precisely, the racial policy of the Nationalist Party.

50. In an exercise of reverse ping-pong diplomacy, as indicated, *supra* note 11, India recently refused to allow teams from Israel and South Africa to compete in the 1975 World Table-Tennis Championships. Ironically, the South African team was racially mixed. Washington Post, Feb. 7, 1975, § A, at 14, col. 1.

pendent of the Rhodesian government, in accordance with Olympics Rule 25.<sup>51</sup> The report of the Commission seemed to confirm the commitment of the IOC to the concept of social change through inclusion, rather than exclusion.<sup>52</sup> Although its 1972 decision, taken in a mood of great pressure, if not coercion, seemed exceptional, the IOC nevertheless decided in May 1975 to extend that decision to the 1976 Games.

Whatever the substantive merits or deficiencies of its decisions, the IOC increasingly manifests a reliance upon prescribed procedures. In view of this evolving, lawyerly process—only suggested by these two examples—it is not unlikely that a pattern of decision-making will develop within the Olympic Movement with some resemblance to a jurisprudence to guide future athletic change. The International Olympic Committee has become more inclined to make its decisions public and is pointedly offering guidance in shaping domestic policies and organization.<sup>53</sup> Increasingly, then, transnational sports competition can be expected to generate debate and inform the public of certain norms within the international legal framework that can be applied to defining United States foreign sports policy. Moreover, a deference to the value structure premised in Rule 3 of the Olympic Rules would relieve private and public policymakers alike of the kinds of political choices that have given sports organizations a bad name when they have made unpopular decisions, and which have raised the “bugbear” of a politically polluted sports arena.

## V. CONCLUSION

In light of the foregoing analysis, the United States Government clearly should develop a comprehensive and coherent foreign sports policy, rooted in the values and norms of the Olympic Movement. Good policy can mean an end to bad politics. Although Rules 8 and 25 of the Olympic Rules<sup>54</sup> as well as related injunctions may be read to discourage further involvement by the government in athletic matters, that interpretation seems inaccurate. What is important is not the quarantine of governments and politics from international athletic exchange, but the channeling of governmen-

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51. See note 9 *supra*; *Excelsior* (Mexico City), Feb. 12, 1975, at 7, col. 1.

52. See the recent statements of Lord Killanin, antagonistic toward national policies of boycott and exclusion, *supra* note 3, at 580. See *N.Y. Times*, Oct. 22, 1974, at 51, col. 1.

53. Note, for example, the discussion in note 20 *supra*.

54. See note 9 *supra*.

tal decisions and politics along acknowledged lines of world ordering. Here is a golden opportunity for the United States to establish constructive policy, not simply on the basis of bureaucratic interplay, political expediency, ideological constraints and pluralistic pressures, but upon the basis of emerging global values. A foreign sports policy seems the best means of protecting individual athletes from political injury, while guiding governmental and non-governmental decision-making along lines consistent with emerging world community norms. Policy is, after all, a kind of fiberglass pole which need not supplant the vaulter.

