

THE FUTURE OF INTERNATIONAL SPORTS LAW

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I. THE GLOBALIZATION OF SPORTS AND SPORTS LAW

The globalization of sports competition is a sign of our times. Inspired by the modern Olympic Games, nurtured by communications technology, and fueled by high-profile professional athletes and commercial interests, the process of globalization continues apace.¹

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1. The media's burgeoning interest in the globalization of sports is apparent. In just the

In this process international sports law is gradually assuming a prominent role.²

A. Baseball as an Example

A good example of this globalization is baseball, which was once considered a pastime of the United States alone. So isolated was the sport that until recently baseball teams remained largely impervious to such fundamental requirements of international sports law as those involving drug testing and related sanctions.³ Times have changed, however. Baseball has gone global. It is now a national pastime in Japan, Taiwan, South Korea, the Dominican Republic, Mexico, Nicaragua, Panama, Cuba, and Venezuela. In baseball's "new world order,"⁴ United States teams compete for survival. For example, during the first World Baseball Classic, hosted by the United States in 2006, its national team was scarcely a contender.⁵ Foreign teams regularly win the Little League World

month preceding the author's presentation on which this article is based, the printed media carried several noteworthy items in addition to extensive coverage of the 2006 Winter Olympics. For example, the *Wilson Quarterly* celebrated its first 30 years of publication by asking ten well-respected thinkers to speculate on what the next 30 years might bring. The second paragraph of the symposium invited readers to

[t]hink of Barry Bonds, the baseball slugger implicated in the steroid scandal. We are already debating whether he should go into the record books as the same sort of human as the people whose records he broke. Now move out a few years. What happens if the 2008 Beijing Olympic Games feature genetically enhanced athletes dramatically different from their competitors, as some bioengineers matter-of-factly predict?

Joel Garreau, *Will We Still Be Fully Human?*, in *The Next 30 Years*, WILSON Q., Winter 2006, at 32. Another article, in *Atlantic Monthly*, forecasts the possibility of rather dire politics in the run-up to the Beijing Olympics. Jennifer Lind, *Dangerous Games*, ATLANTIC MONTHLY, Mar. 2006, at 38. A third article examined the globalization of baseball. Robert Andrew Powell & Alan Schwarz, *Baseball's New World Order*, N.Y. TIMES SPORTS MAG. (PLAY), Feb. 2006, at 28.

2. The term "international sports law" refers to the process that engages more or less distinctive rules, principles, procedures, and institutions which govern important consequences of transnational sports activity. See generally JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW (2d ed. 2004); BASIC DOCUMENTS OF INTERNATIONAL SPORTS ORGANIZATIONS xi-xii (Robert Siekmann & Janwillem Soek eds., 1998).

3. See, e.g., Lee Jenkins et al., *A Chance for Baseball to Settle Its Drug Score*, N.Y. TIMES, Dec. 12, 2004, § 8, at 1.

4. See Powell & Schwarz, *supra* note 1. Although past United States political or military influence generally explains this peculiar roster of national converts to the sport, it is obvious from the roster that politics no longer is relevant.

5. See Editorial, *For the Love of Yakyu*, N.Y. TIMES, Mar. 22, 2006, at A24. For a general summary of the World Baseball Classic, see Robert Marquand, *A World Cup Rival? Baseball Fields a Global Game*, CHRIST. SCI. MONITOR, Mar. 3, 2006, at 1.

Series.⁶ The Caribbean countries have their own “world series.”⁷ Latinos, most of whom are recruited abroad, make up 37% of players under contract with major league clubs.⁸

To be sure, the globalization of baseball has involved strikeouts as well as runs. For example, the demise of the Montreal Expos in 2004 left Major League Baseball (MLB) with only one Canadian franchise, the Toronto Blue Jays,⁹ and in 2005 the International Olympic Committee (IOC) dropped baseball as an Olympic sport beginning after the 2008 Games.¹⁰ The IOC’s decision bespeaks the failure of MLB, still the prime mover in the sport, to yield its top players for the quadrennial Games at a time when the IOC is anxious to eliminate sports from the Games that attract only a marginal global audience. More importantly, however, the IOC was frustrated with the bad publicity that had been generated by MLB’s failure to establish an effective program for combating the sport’s notorious reliance on the use of steroids, amphetamines, and other performance-enhancing agents.¹¹

The IOC’s decision was one of several wake-up calls that prompted the MLB, which had done nothing about its drug problem until 2002, to move rapidly toward compliance with international standards. Particularly noteworthy in this development has been the gradual applicability to a *professional* sports organization of these standards, as expressed in the World Anti-Doping Code¹² and now in

6. See ENC. BRIT. 2005 BOOK OF THE YEAR 298 (noting that Curacao had won the Little League World Series); 2004 BOOK OF THE YEAR 293 (noting that a Japanese team had won the Little League World Series for the third time in five years).

7. See Jens Erik Gould, *Venezuela Eyes Moment in the Sun at the Classic*, N.Y. TIMES, Mar. 1, 2006, at C17.

8. *Id.*

9. See George Vecsey, *Take the Renewal, Leave the Memories*, N.Y. TIMES, Jan. 13, 2005, at D2.

10. See Lynn Zinser, *I.O.C. Drops Baseball and Softball*, N.Y. TIMES, July 9, 2005, at D1. Softball also was dropped from the Olympic roster, partly because of its association with baseball despite their gender-related and other differences. European support saved the pentathlon from the IOC dustbin. The last sport to be withdrawn from the Olympic Games was polo in 1936.

11. See, e.g., Jack Curry, *Baseball Backs Stiffer Penalties for Steroid Use*, N.Y. TIMES, Nov. 16, 2005, at A1; Jenkins, *supra* note 3; Jim Klobuchar, *Can Baseball Make a Clean Sweep?*, CHRIST. SCI. MONITOR, Mar. 31, 2006, at 12; Michael Sokolove, *From Pastime to Nap Time*, N.Y. TIMES SPORTS MAG. (PLAY), Feb. 2006, at 24.

12. *World Anti-Doping Agency*, WORLD ANTI-DOPING CODE (2003), available at http://www.wada-ama.org/rtecontent/document/code_v3.pdf (last visited May 10, 2006). For a summary, see Klaus Vieweg, *The Definition of Doping and the Proof of a Doping Offense (An Anti-Doping Rule Violation) Under Special Consideration of the German Legal Position*,

the International Convention Against Doping in Sport.¹³ No longer is the commercial structure of professional sports, in terms of player contracts and collective bargaining, a barrier to the requirements of international sports law.

Aside from the serious problem of doping, globalization of the sport introduces the complications of distance and foreign law to the normal practice of “baseball lawyers.” Routine issues range from the recruitment, retention, and transfer of athletes to product endorsements by players and avoidance of double taxation. The application of foreign law and procedures and consideration of varying structures of sports organizations abroad are normally within the margins of a sport lawyer’s practice.

B. Other Examples of Globalization

Moving beyond the baseball park, we can see that the world of sports is small, indeed. Sports activity and related issues are becoming universal. A few recent examples are illustrative. Two Iranians became the first Muslim women to conquer Mt. Everest.¹⁴ The Pope established a sports department in the Vatican, in part to foster brotherhood among peoples and in part to respond to doping scandals, fan violence, and corruption in sports.¹⁵ A North Korean soccer stadium erupted in spectator violence after the host team had lost, ironically, to Iran.¹⁶ The small world of sports is also apparent in the frequent transplantation of sports and athletes. The International Cricket Council is moving its headquarters from London to Dubai.¹⁷ Twenty-seven of the 30 teams in the National Basketball Association (NBA) feature at least one non-United States national from any of 82 countries.¹⁸ And who knows where Brazilian super-striker Ronaldo,

15 MARQ. SPORTS L.J. 37 (2004).

13. United Nations Educational, Scientific, and Cultural Organization (UNESCO), International Convention Against Doping in Sport, *adopted* Oct. 19, 2005, ED/2005/CONV-DOP rev. 2, [hereinafter UNESCO Convention] *available at* <http://unesdoc.unesco.org> (last visited May 10, 2006).

14. Michael Theodoulou, *First Muslim Women Conquer Mount Everest*, CHRIST. SCI. MONITOR, June 1, 2005, at 7.

15. USA TODAY, Aug. 4, 2004, at 11C.

16. Robert Kilborn & Ross Atkins, *World*, CHRIST. SCI. MONITOR, Mar. 31, 2005, at 20 (It is ironic that the White House designated these countries as two of the three forming an Axis of Evil (the third was Saddam Hussein’s Iraq), only to witness their nationals fighting each other in the soccer stadium).

17. *See* FIN. TIMES, Aug. 13-14, 2005, at 5.

18. N.Y. TIMES, Nov. 20, 2005, § 8, at 6.

lately of the U.K., Italy, and Spain, may end up next.

II. FUTURE DEVELOPMENTS IN INTERNATIONAL SPORTS AND SPORTS LAW: THE COUNTDOWN

Virtually all of these developments raise issues within the ambit of international sports law. What are the trends? What is the future of international sports law? What follows is a forecast of the top ten trends in the sports arena that are most apt to influence developments in international sports law. They are listed in reverse order of importance.

#10. Popularization of sports programs in the Olympics and other major international competition

International sports come and go in Olympic and other major international competitions. Consider, for example, the following sports: lawn tennis, rackets, roque, lacrosse, tug-of-war, rope climb, Indian club swinging, 60-meter sprint, five-mile run, 200-meter hurdles, 4,000-meter steeplechase, obstacle swimming, underwater swimming, plunge for distance in diving (to gain the greatest distance straight forward in the water), polo, rugby, and motor boating. All of these activities used to be Olympic events but no longer are.¹⁹ The roster of sports featured in international competition continues to evolve. Recent additions to the Olympic program ranged in popularity during the 2006 Winter Games from the TV-shunned curiosity of curling to the wildly popular adventure of team-pursuit snowboarding.

What does the future hold? Fueled by media revenue, corporate sponsorships, and hugely inflated gate receipts, the future would seem to lie in sports with mass appeal. The trend is likely to be toward popular pastimes. The possibilities include, for example, the debut of golf, a revival of some form of rugby or American-style football, a revival of lacrosse, a revival of motor boating, and even the debut of such historically blue-collar pursuits as bowling and NASCAR. Because major competitions such as the Olympic Games are unlikely to showcase a greater proliferation of sports, however, any new sports will likely only replace existing ones.

19. See Nafziger, *supra* note 2, at 14 for a more complete list of discarded sports.