

CHILD RIGHTS AND SPORTS LAW: HOW CAN WE PROTECT YOUNG ATHLETE'S HUMAN RIGHTS UNDER THE UN CONVENTION ON THE RIGHTS OF THE CHILD?

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Abstract: *Young athletes have suffered from harmful effects to their life and development as well as economic and sexual exploitation without sufficient protection by the FIFA and IOC. In this regard, the UN Convention on the Rights of the Child (CRC) is an essential instrument for respecting and protecting young athletes' human rights. Under the CRC, the Contracting States must prevent the infringement of child rights, and should take appropriate measures to guarantee the enjoyment of the rights. However, it cannot directly impose legal obligations on the FIFA and IOC which enjoy the "private autonomy". Because of the private autonomy, the protection of child rights is difficult to be realised. Under these circumstances, I will analyse the following question: Can the CRC impose legal obligations on the IOC and FIFA? In doing so, Article 3 of the FIFA Statutes and Article 1.4 of the IOC Code of Ethics will play an essential role to override the "private autonomy" for the improvement of the child protection in sport. Through this analysis, it would be clarified whether young athletes may claim the violation of their rights under the CRC before the FIFA judicial bodies and the Court of Arbitration for Sport.*

Keywords: Human rights, child protection, FIFA Statutes, IOC Code of Ethics, the UN Convention on the rights of the child (CRC), sports, young athletes

I. Introduction

The change from amateurism to professionalism of sports triggers an inevitable problem to the protection of young athletes' human rights¹: for instance, young athletes have suffered from harmful effects to their life and development²

1. Paulo David (2005), *human rights in youth sport: a critical review of children's rights in competitive sports*, Routledge: New York, pp. 16-18.

2. For instance, the threat to physical integrity has happened in Russia caused by the Russian child athletes were doping at their school. Doping would cause a serious damages on child body. See Guardian, "Russian child athletes are doping at school, says sports minister", 3 February 2015; available from <https://www.theguardian.com/sport/2015/feb/03/russian-child-athletes-doping-school-sports-minister> (accessed on 28th of November 2019; all online sources are checked at the same date).

and economic and sexual exploitation without sufficient protection by their caregivers, such as their clubs, sports associations or States.³ Mega sports events (ex. the Olympic Games and FIFA World Cup) bring about a specific problem where athletes must play their sports under high pressure to triumph in sports competitions.⁴ As a consequence, this situation for young athletes causes them to commit, *inter alia*, the use of illegal substances listed on the World Anti-Doping Code (WADC, 2019)⁵, and thus they suffer from a serious effect on their physical and mental conditions. In this sense, they should be protected from the infringements of their rights under any forms of abuse and exploitation.⁶

A common understanding in the international community is that children⁷ should be protected from any form of violence and abuse as rights holders,⁸ and their States should provide “special care and assistance” for them.⁹ In this regard, the UN Convention on the Rights of the Child (CRC) is an essential instrument for respecting and protecting their human rights.¹⁰ Under the CRC, the Contracting States must prevent the infringement of child rights, by reason of, for instance, the economic exploitation,¹¹ sexual abuse,¹² and corporal and moral

3. See Mega Sporting Events Platform for Human Rights, *Children's Rights in the Sports Context*, Sporting Chance White Paper 4.1 Version 1, January 2017, pp. 13-14.

4. See DAVID (2005), *supra* note 1, pp. 36-37.

5. The IOC disqualified some young athletes; see *IOC Disqualifies Athlete for Violating Anti-doping Rules at The Summer Youth Olympic Games*, 5 November 2014; available from <https://www.olympic.org/news/ioc-disqualifies-athlete-for-violating-anti-doping-rules-at-the-summer-youth-olympic-games>.

6. DAVID (2005), *supra* note 1, pp. 3-8.

7. This article will use the terms “children” and “young athletes” as the meaning that anyone aged below 18 years old according to Article 1 of the CRC. Furthermore, under the CRC, the child is not object of protection, but a subject of rights; See, Committee on the Rights of the Child, *General Comment No. 13 (2011), The right of the child to freedom from all forms of violence*, 18 April 2011, Un Doc CRC/C/GC/13, para. 59; See also FIFA Toolkit, Principle 2 (a); FIFA, *Child Safeguarding Toolkit for Member Associations*, 30 June 2019, p. 13; available from <https://resources.fifa.com/image/upload/toolkit-fifa-guardians.pdf?cloudid=nz1lyz3ykaioy7gwfmg>.

8. CRC, Preamble, para. 3.

9. CRC, Preamble, para. 4.

10. The CRC was adopted by the UN General Assembly on 20 November 1989 and came into force on 2 September 1990. Concerning the history of the CRC, see John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford University Press, 2019, pp. 1-7.

11. CRC, Article 32.

12. CRC, Article 34.

punishment.¹³ Furthermore, they should take appropriate measures, such as to provide sufficient care for children with disabilities,¹⁴ to fight against doping,¹⁵ and to guarantee the enjoyment of education for children.¹⁶

However, traditionally speaking, the CRC cannot impose legal obligations on the private associations, such as FIFA and IOC, but on the Contracting States. The impediment to implementing these obligations is that the private associations normally enjoy the freedom of association (“private autonomy”), but this freedom will be limited under “public interests”.¹⁷ The Contracting States must strike a balance between “public interest” and “private autonomy” to realise the child rights protection in their territories. If the States decide that “private autonomy” is superior to “public interests”, the protection of child rights is difficult to be realised.

Under these circumstances, in order to enhance the child rights’ protection, I will analyse the following question: Can the CRC directly impose the legal obligations on private associations, such as the IOC and FIFA? In doing so, Article 3 of the FIFA Statutes and Article 1.4 of the IOC Code of Ethics will play an essential role to override the “private autonomy” for enhancing the child protection under the CRC. Through this analysis, it would be clarified whether young athletes can claim the infringement of their rights under the CRC before the FIFA judicial bodies¹⁸ and the Court of Arbitration for Sport (CAS),¹⁹ as well as their national courts.

For this purpose, this article is divided into the following chapters: After this introduction, I will briefly check the child rights under the CRC and analyse how the rights should be understood in the context of sport. Furthermore, I will consider how the CRC may impose the legal obligations on the FIFA and IOC. At the end of this article, I will give my conclusion and point out the future issue for subsequent research.

13. CRC, Article 19.

14. CRC, Article 23.

15. CRC, Article 6.

16. CRC, Article 28.

17. In particular, “Switzerland recognizes the autonomy of clubs and associations, which stems from the private-law principle of freedom of association. Clubs and associations enjoy great freedom of action, particularly as regards the organization of their internal affairs. Switzerland accordingly recognizes the international disciplinary rules of clubs and associations”; Swiss Confederation, “Sport justice and state justice in Switzerland”, in *Enlarged Partial Agreement on Sport (EPAS)*, EPAS (2013) 30, 23 May 2013, Strasbourg.

18. FIFA Statutes, Articles 52 to 55.

19. FIFA Statutes, Articles 57 and 58; Olympic Charter, Rule 61.

II. Child rights in sport under the UN Convention on the Rights of the Child

This chapter will briefly skim through the catalogue of child rights under the CRC in the context of sport.²⁰

Before this analysis, the term “*best interest of the child*” should be taken into account when the CRC applies²¹ because it is a fundamental value of the CRC. This notion must be paramount, and thus influences with the interpretation of the Convention in favour of child protection.²² To realise the child’s best interest, Article 4 of the CRC imposes on the Contracting States the general obligation to implement the child rights: that is, the Contracting States “shall undertake all appropriate ... measures for the implementation of the rights recognized in the present Convention”. This implementation must take into account available resources and international cooperation.²³ The provision “plays a complementary role in offering a full account of the means by which the obligations imposed on states with respect to each article under the Convention are to be implemented”.²⁴ In this sense, it requires the Contracting States to guarantee all child rights under the CRC in the context of the child’s best interests.

Above all, I will analyse five categories of rights under the CRC respectively in the context of sports: (1) the rights to life and development (Article 6); (2) the right to protection against all forms of violence (Articles 19 and 34); (3) the rights of children with disabilities (Article 23); (4) the right to education (Articles 28); (5) the right to protection from economic exploitation (Article 32).

1. The rights to life and development

Currently, young athletes have suffered from harmful substances, so-called “doping”, in sport. The Doping causes some negative effect on athletes’ physical and mental conditions. In this case, it is a serious threat through the use of harmful substances to improve their performance in sports can lead to their death.²⁵ In this context, this section will consider (1) the right to life that protects child’s

20. See, Paulo David (1999), “Children’s rights and sports”, in *The International Journal of Children’s Rights*, vol. 7, no. 1, p. 56.

21. TOBIN, *supra* note 10, p. 74 and pp. 76-77.

22. Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 29 May 2013, UN Doc CRC/C/GC/14, para. 52-79.

23. TOBIN, *supra* note 10, pp. 108-158.

24. *Ibid.*, p. 109.

25. DAVID, *supra* note 1, pp. 105-106.

life against doping, and (2) the right to development that ensures children not to suffer from their healthy development by reason of the doping.²⁶

With respect to the right to life, Article 6, paragraph 1 prescribes that the Contracting States “recognize that every child has the inherent right to life”. This right has been accepted in other international and regional human rights conventions, and many jurisprudences and researches support this right.²⁷ According to them, this provision can be interpreted as imposing on the Contracting States the obligation to prevent young athletes from any threats to their life, and the States should take appropriate measures, for instance, to enact special national law for their protection.²⁸

Additionally, the right to development constrains the States to protect to “the maximum extent possible the survival and development of the child” under Article 6, paragraph 2 of the CRC. The term “development” must be understood in a broad sense it notably includes “the child’s physical, mental, spiritual, moral, psychological and social development”.²⁹ In this regard, it is evident that illegal substances must affect child’s physical and mental conditions, and therefore the right to development for young athletes is infringed by doping conducts.

Above all, the rights to life and development in the context of sports are essential for child protection due to the threat of doping conducts lead to negative consequences against young athletes. They do not *usually* intentionally commit to the use of illegal substances to improve their performance,³⁰ but their coaches recommend them to use these substances.³¹ To solve this problem, Article 6 of

26. David argues that doping conducts would infringe the right to health but it seems me that the doping directly violated the right to life and development. See *ibid.*, p. 11.

27. Walter Kälin & Jörg Künzli (2011), *The Law of International Human Rights Protection*, Oxford University Press: Oxford, pp. 273-303; D.J Harris *et al* (2018), *Law of the European Convention on Human Rights, 4th edition*, Oxford University Press: Oxford, pp. 205-236; William A. Schabas (2015), *The European Convention on Human Rights: A Commentary*, Oxford University Press: Oxford, pp. 117-163.

28. Germany has already prohibited doping conducts under the national law; See Gesetz gegen Doping im Sport (Anti-Doping-Gesetz - AntiDopG) vom 10. Dezember 2015.

29. TOBIN, *supra* note 10, p. 223.

30. Alberto Salazar, who is famous track coach, has received a four-year ban by the U.S. Anti-Doping Agency (USADA) for doping violations. He orchestrate and facilitate prohibited doping conduct while acting as head coach of the Nike Oregon Project (NOP), which is a training camp for developing adults and young athletes: in detail, see Sven Busch, “TRACK COACH ALBERTO SALAZAR GETS 4-YEAR BAN FOR DOPING VIOLATIONS”, 1st October 2019, Olympic Channel (<https://www.olympicchannel.com/en/stories/news/detail/track-coach-alberto-salazar-gets-4-year-ban-for-doping-violations/>); see also *United States Anti-Doping Agency (USADA) v. Alberto Salazar*, AAA Case No. 01-17-0004-0880, 30 September 2019.

31. In connection with note 30, Mary Cain, who is an elite runner, accuses Alberto Salazar

the CRC can impose the obligation to protect against any threats to child life and healthy development in sport.³²

2. The rights to protection against all forms of violence

Article 19 of the CRC stipulates that the Contracting States must take all appropriate measures “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

Concerning the obligations in general, the States must take preventive and responsive³³ measures to implement them under Article 19, paragraph 2 of the CRC: in particular, the preventive measure includes “social programmes to ... support a child and those who have care of the child as well as any other forms of prevention”.³⁴ In other terms, it includes “education, environmental or product modification and enforcement of legislative initiatives” to prevent any forms of violence.³⁵

A. Physical and psychological abuse

In sport, physical and emotional abuse is one of the crucial issues for the infringement of child rights under Article 19 of the CRC. In the context of sports, Paulo David (2005) pointed out that “[c]ompetitive sports can expose young athletes to at least four types of physical abuse and violence: excessive intensive training; peer violence; physical violence by adults including corporal punishment; and violence due to participating in competitions”.³⁶ By the same token, they also cause them to suffer from psychological abuse, such as excessive pres-

zar and Nike on video published on *New York Times* by reason of “physical and emotional abuse” because of birth control pills and diuretics to lose weight, which is prohibited to use under the WADC. This consequently led her to have suicidal thoughts and inflict self-harm. See Sarah Lorge Butler, “The Latest in Mary Cain’s Allegations Against Nike and Salazar”, 10 November 2019, *Runner’s World*; available from <https://www.runnersworld.com/news/a29750469/mary-cains-allegations-against-nike-and-salazar/>.

32. In this context, if young athletes unintentionally use illegal substances, it seems that the Contracting States and their caregivers should also provide a sufficient medical treatment for them under Article 24 of the CRC (the right to health). See TOBIN, *supra* note 10, pp. 902-969.

33. TOBIN, *supra* note 10, p. 706.

34. CRC, Article 19, para. 2.

35. TOBIN, *supra* note 10, p. 717.

36. DAVID (2005), *supra* note 1, pp. 63-79 at 63.

sure and stress, verbal violence and emotional abuse, imposed diets, eating disorders and burn-out syndrome.³⁷

An example of physical and psychological abuse is the protection of young athletes from corporal³⁸ and moral³⁹ punishment by their trainers or coaches and even their parents. However, what kind of punishment should be considered as corporal or moral punishment against children?

The corporal punishment⁴⁰ can be defined as the use of physical force that causes “some degree of pain or discomfort, however light”.⁴¹ For instance, it includes “hitting children, with the hand or with an implement”, and “kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion”⁴²; by contrast, the non-physical forms of punishment comprises “punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child”.⁴³ The corporal punishment and other non-physical forms of punishment can occur in any settings,⁴⁴ that is, sports clubs and institutions in terms of sport context.

In sum, Article 19 of the CRC can be interpreted as the meaning that it includes the right to protection of young athletes from physical and psychological abuse, in particular, corporal and moral punishment. For this purpose, the Contracting States shall take appropriate measures to prevent the infringement of child rights, for instance, to enact national law to penalise such abuses.

B. Sexual abuse and exploitation

Article 19 of the CRC also includes the protection against sexual abuse, but this provision should read in conjunction with Article 34 of the CRC, which specifically prescribes the protection from sexual abuse and exploitation.⁴⁵

37. *Ibid.*, pp. 80-91.

38. See *Ibid.*, pp. 63-79.

39. See *ibid.*, pp. 80-91.

40. An example is that “punitive training” can be recognised as corporal punishment; see, Ivona Truscan (2012), “Child Athletes Find Support in Human Rights Law for Tackling Punitive Forms of Training”, in *Human Rights & International Legal Discourse* vol. 6, no. 2, pp. 302-328; see also DAVID (2005), *supra* note 1, pp. 69-71.

41. Committee on the Rights of the Child, *General Comment No. 8 (2006); The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, 2 March 2007, UN Doc CRC/C/GC/8, para. 11.

42. *Ibid.*, para. 11.

43. *Ibid.*, para. 11.

44. *Ibid.*, para. 12.

45. DAVID (2005), *supra* note 1, pp. 92-95.

In this regard, what kinds of conducts would be recognised as sexual abuse and exploitation? According to the Commentary of Article 34 of the CRC, the term “sexual abuse” and “sexual exploitation” are often overlapped, but both concepts are slightly different. The term ‘sexual abuse’ signifies that “the involvement of a child in a sexual activity against his or her free will, or where the child, due to his or her level of development, is unable to provide genuine consent to involvement in such actives”⁴⁶. It includes the physical and moral abuse such as sexual harassment⁴⁷; by contrast, the ‘sexual exploitation’ involves “a nexus between the sexual abuse of a child and an exchange, whether direct or indirect, financial or in some other form, for the benefit of another person or persons”⁴⁸.

Based on the above, the right under Article 34 of the CRC includes three obligations to respect, protect and fulfil. The obligation to respect is “to protect children from state actors from engaging in acts that would constitute sexual abuse and/or sexual exploitation of children”; the obligation to protect is “to protect children from non-state actors from engaging in acts that would constitute sexual abuse and/or sexual exploitation of children”; and the obligation to fulfil is “to empower and equip children to the extent that is reasonably practicable to do so in light of their evolving physical and mental autonomy, with the skills necessary to defend and protect themselves against acts that would constitute sexual abuse and/or sexual exploitation of children”⁴⁹. In general, the Contracting States must take all appropriate measures to implement these obligations to realise the right to protection against sexual abuse and exploitation.

In another term, it can also be said that the right to protection against sexual abuse and exploitation should be guaranteed by the Contracting States in the context of sports. For that purpose, they must take appropriate measures in accordance with the obligations under the Articles 19 and 34 of the CRC, for instance, to establish the “legal framework defining in detail the crime of sexual abuse”⁵⁰.

3. The rights of children with disabilities

Article 23, paragraph 1 of the CRC provides that the Contracting States “recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community”. At the same time, Article 23, paragraph 2 provides that they also “recognize the right of the disabled child to special care”. In other words, the two provisions guarantee (1) the rights of chil-

46. TOBIN, *supra* note 10, p. 1316.

47. *Ibid.*, p. 1314.

48. *Ibid.*, p. 1318.

49. *Ibid.*, p. 1330.

50. DAVID (2005), *supra* note 1, pp. 100-101.

dren with disabilities to enjoy a full and decent life; and (2) the right of the child with disabilities to special care.

The right to a full and decent life should concern three elements: (a) ensuring dignity; (b) promoting self-reliance; and (c) facilitating active participation in the community⁵¹.

Firstly ensuring dignity demands “that no children with disabilities are to be subjected to discrimination in the enjoyment of his or her rights under the Convention as a result of disability”.⁵²

Secondly, promoting self-reliance should be interpreted as the meaning that “[t]he obligation requires states to take all necessary and appropriate measures to arrest and reverse practices which historically have left children with disabilities without any of the skills necessary to enjoy a relatively independent and empowered existence”.⁵³

Thirdly, the facilitation of active participation in the community requires the States to take appropriate measures which access to information and communication; safe and easily accessible public transportation; and removal of physical barriers and ensuring easy access to public areas and buildings, in particular, sports settings.⁵⁴ When these conditions are satisfied, the States did successfully respect and protect the right to a full and decent life.

The right to special care complements the rights mentioned above: it imposes on the States to give appropriate assistance to the eligible child and his or her caregiver.⁵⁵ In the context of sports, child caregivers in these provisions should be interpreted as the sports associations which dominantly control over the young athletes. In this sense, this right imposes on the Contracting States the obligation to give appropriate assistance to the young athletes and their sports associations, for instance, to establish a special facility for young athletes with disabilities in the purpose of the facilitation of active participation in the sports community.

In short, Article 23 of the CRC covers two rights to child protection: (1) the rights of children with disabilities to enjoy a full and decent life; and (2) the right of the disabled child to special care. To implement both rights, the Contracting States should take appropriate measures to enjoy a full and decent life through sports activities. But, these provisions, however, should be read in conjunction with the Convention of the Rights of Persons with Disabilities (CRPD).⁵⁶

51. TOBIN, *supra* note 10, p. 863-864.

52. *Ibid.*, p. 865.

53. *Ibid.*, p. 868.

54. *Ibid.*, p. 870.

55. See *ibid.*, pp. 872-877.

56. CRPD, Preamble (r).

4. *The right to education*

Concerning the right to education, Article 28, paragraph 1, of the CRC prescribes that the Contracting States “recognize the right of the child to education”. The right obliges them to implement the following three types of obligations to respect, protect and fulfil: the obligation to respect “requires that states must avoid measures that unreasonably interfere with the enjoyment of a child’s right to education”.⁵⁷ However, where interference occurs, the States must establish that it was necessary and justified.⁵⁸ The obligation to protect requires that the States “to take measures to prevent third parties ... from unreasonably interfering with the enjoyment of the right to education”.⁵⁹ The obligation to fulfil “requires that states take all appropriate measures within the scope of their available resources to ensure the effective enjoyment of the four qualitative dimensions of the right to education”.⁶⁰

In order to implement these obligations, the Contracting States “shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”.⁶¹ In the context of sports, this provision can be interpreted as meaning that they should provide sufficient education programme in schools and sports institutions which provide a training programme for young athletes.

In sum, Article 28 of the CRC would be interpreted the right as a meaning that, in terms of sports, the Contracting States must avoid interfering with child right to education without legitimate aim, prevent the sports associations from interfering with the child right, and take all appropriate measures to realise the enjoyment of the right.⁶²

5. *The right to protection from economic exploitation*

Article 32, paragraph 1 stipulates that the right of child under Article 32 includes two distinct rights: (1) the right to protection from economic exploitation; (2) the right to protection from performing any work that is to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental development. This provision does not prohibit child work *per se*, and recognises that “work can be beneficial for a child’s development and be

57. TOBIN, *supra* note 10, p. 1071.

58. *Ibid.*, p. 1072.

59. *Ibid.*

60. *Ibid.*; Concerning the obligation to fulfil, see also *ibid.*, pp. 1067-1071.

61. CRC, Article 28, para. 2.

62. See DAVID (1999), *supra* note 20, pp. 72-73.

consistent with other rights recognized in the Convention”.⁶³ Furthermore, the obligation to “recognize” these rights does not require the Contracting States to realise Article 32 immediately, but, at least, to promptly take steps towards protecting children from the listed practices under this provision, and to “move as expeditiously and effectively as possible towards the full implementation”.⁶⁴

Concerning the first right, there is no common ground of “economic exploitation”.⁶⁵ The General Comment No. 7 of the Committee indicates that “[e]xploitation of young children in the entertainment industry, including television, film, advertising and other modern media, is also a cause for concern”.⁶⁶ In the context of sport, young athletes would engage in a sponsoring contract to continue their professional sports activities.⁶⁷ In doing so, clubs or companies that have the sponsoring contract with them can use their image rights to improve the company’s image in public.⁶⁸ Under the circumstance, the young athletes should be protected from such an industry not to be interfered with their other rights, in particular, the rights to development and education under the CRC. Thus, the young athletes have the right to protection from economic exploitation, without illegitimate interference with their other rights under the CRC.

The second right is concerned with “hazardous and harmful work”. The meaning of the term “must be informed by a physiological and psychological assessment as to the likely impact of the work on a child’s health and development” so that certain industries or activities, such as mining, factory work, and manufacturing sector, have been recognized as hazardous or harmful work for children.⁶⁹

To implement these rights, the Contracting States “shall take legislative, administrative, social and educational measures” to, for instance, “(a) provide for a minimum age or minimum wages for admission to employment; (b) provide for appropriate regulation of the hours and conditions of employment; (c) provide

63. TOBIN, *supra* note 10, p. 1225.

64. *Ibid.*, p. 1231.

65. *Ibid.*, p. 1232.

66. Committee on the Rights of the Child, *General Comment No. 7 (2005); Implementing child rights in early childhood*, 20 September 2006, UN Doc CRC/C/GC/7/Rev.1, para. 36(e).

67. For instance, Helvetica, Swiss private association, offers financial supports for young athletes in Switzerland; see, <https://www.helvetia.com/ch/web/fr/notre-profil/sponsoring/engagement/aide-sportive.html> ; Swisscom, swiss telephone company also offers sponsoring contract on its website; see, <https://www.swisscom.ch/fr/about/entreprise/portrait/marque/sponsoring/demandesponsoring.html>.

68. *Ibid.*

69. TOBIN, *supra* note 10, p. 1236.

for appropriate penalties or other sanctions to ensure the effective enforcement of the present article”.⁷⁰

In the context of sport, young athletes are gradually building up their commercial value as a business commodity that will be traded among sports clubs in football, baseball and basketball.⁷¹ In addition, their sport activity cannot be understood as “light work” on the ground that they normally train between two to eight hours a day.⁷² This issue is closely connected with *labour law* that protects workers in the workplace, but it might be problematic as to the interpretation of the terms “workers” and “workplace” while applying the labour law in sport⁷³. In this sense, this issue should be examined from a human rights’ perspective.

In sum, Article 32 of the CRC covers the right to protection against economic exploitations, for instance, to prevent the Contracting States from interfering with the enjoyments of other rights under the CRC, in particular, the right to education. To implement the right, the States shall take all appropriate measures to enhance the working conditions of young athletes.

III. How can the CRC impose legal obligations on the FIFA and IOC?

For the purpose of implementing these child rights under the Convention, this chapter will consider how legal obligations under the CRC can be imposed on the FIFA and IOC.

According to the traditional understanding of international law, it does not recognise the private actors,⁷⁴ including associations and individuals, as the subject of international law.⁷⁵ However, “there is no general rule that the individuals cannot be ‘subject of international law’”.⁷⁶ In this regard, the subject of interna-

70. CRC, Article 32, para. 2.

71. DAVID, *supra* note 1, pp. 126-127.

72. *Ibid.*, p. 131-133.

73. Collective sports, such as baseball, football and basketball, are not problem, but individual sports must be difficultly qualified the athletes’ legal status.

74. An exceptional example is the International Committee of the Red Cross (ICRC) that agreed with the Swiss Federal Council to determine the legal status in Switzerland. See *Agreement between the International Committee of the Red Cross and the Swiss Federal Council to Determine the Legal Status of the Committee in Switzerland*, 19 March 1993, GA Res 45/6/16, 16 October 1990.

75. SCHABAS, *supra* note 27, p. 731; International law has been considered as inter-state law, which has a legally binding effect to the states, and if certain conditions satisfied, international organizations can also be the subject of international law. See James Crawford (2019), *Brownlie’s Principle Public International Law*, 9th edition, Oxford University Press: Oxford, p. 105.

76. *Ibid.*, CRAWFRORD, p. 111.

tional law means “an entity possessing international rights and obligations and having the capacity (1) to maintain its rights by bringing international claims; and (2) to be responsible for its breaches of obligation by being subjected to such claims”.⁷⁷ In other words, international treaties do not directly allow private actors, such as companies, associations and institutions established by private law, to possess any international rights and obligations.

By contrast, human rights law has dramatically been developed after Second World War, and in particular, the European Convention on Human Rights (ECHR) permits private actors to bring a case before the European Court of Human Rights (ECtHR) according to Article 34 of the Convention.⁷⁸ This phenomenon signifies that the private actors can be the beneficiaries of international law,⁷⁹ but international treaties still cannot directly impose international obligations on private actors.⁸⁰ In this sense, the CRC cannot directly impose legal obligations on the FIFA and IOC to implement the child rights.⁸¹ However, for the purpose of implementing the rights of young athletes adequately, I will take into account the following question: Can the CRC *directly* oblige the FIFA and IOC to implement the rights and obligations to protect young athletes?⁸²

77. *Ibid.*, CRAWFORD, p. 105.

78. See SCHABAS, *supra* note 27, pp. 735-752.

79. Higgins claims a different approach for this discussion: she argues that the traditional and positivist’s approach to use the subject and object dichotomy is wrong, and the individuals are “participants” of international law. Based on this understanding, she pointed out that “the principle is equally applicable without the intervention of an international instrument, and that individuals *can* be the beneficiaries of international law rights which fall upon states to perform as a matter of general international law”. Rosalyn Higgins (1994), *Problems and Process – International Law and How We Use It* –, Clarendon Press: Oxford, pp. 48-55.

80. The term “private actors” includes natural and legal person, but natural person (individuals) cannot be imposed any obligations under international law. However, the legal person (private association) have obligations to respect and protect human rights, *inter alia*, of their members and workers within their framework. Hence, it seems me that the individuals and private associations in this term should be distinguished, and it is necessary to recognise that private associations have the obligations under international human rights law to protect their members and workers (individuals).

81. DAVID (2005), *supra* note 1, p. 29; David also argues that the CRC includes the indirect obligations on private actors to operate in accordance with its provisions, in reference with the Committee’s reports. However, he does not explain what is “indirect obligations” on private actors under the CRC, and therefore I cannot agree with his opinion and the obligations cannot apply all sports authorities and organisations. See, *ibid.*, p. 27.

82. The UN has already considered the States obligations to private actors under international human rights treaties. International human rights law do not impose direct legal obligations on private associations, but “States are responsible for enacting and enforcing

With respect to this question, the concept of “*corporate social responsibility*” (CSR) is an essential factor to respect and protect human rights⁸³: According to Florian Wettstein (2012), “[c]orporate social responsibility, as a concept, is often said to be dealing with those responsibilities that corporations may (or may not) adopt on a voluntary basis beyond their mere compliance with legal laws and regulations”.⁸⁴ For developing the notion of the CSR in business and human rights, John Ruggie, the Special Representative of the Secretary-General for Human Rights Council, argues in his report the following three fundamental principles to achieve clarify the global standard of human rights protection by private associations : (1) duty to protect; (2) responsibility to respect; and (3) access to effective remedy.⁸⁵ These principles are incorporated into the *UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (hereinafter: UNGPs) adopted by the UN General Assembly in 2011.⁸⁶ The instrument applies “to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure”,⁸⁷ but it should be noted that it does not have any legally binding effect to both actors to implement these principles.⁸⁸ The purpose of the UNGPs is to create “the key global normative framework for business and human rights” to cope with the human rights crisis in business sectors.⁸⁹

ing national legislation that can have the effect of requiring companies to respect human rights, such as laws mandating a minimum working age”. OHCHR, *Frequent Asked Questions About The Guiding Principles on Business and Human Rights*, (New York and Geneva; United Nations, 2014), p. 5.

83. *Ibid.*, p. 10; see also Justine Nolan (2016), “Mapping the movement: the business and human rights regulatory framework”, in *Business and Human Rights From Principles to Practice*, [Dorothee Baumann-Pauly and Justine Nolan ed.], Routledge: New York, pp. 32-51.

84. Florian Wettstein (2012), “CSR and the Debate on Business and Human Rights: Bridging the Great Divide”, in *Business Ethics Quarterly*, vol. 22, Issue 4, October 2012, p. 748.

85. Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights : Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie, A/HRC/8/5, 7 April 2008, para. 17-26.

86. OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, (New York et Genève ; United Nations, 2011); See also Chip Pitts (2016), “The United Nations ‘Protect, Respect, Remedy’ Framework and Guiding Principles”, in *Business and Human Rights From Principles to Practice*, [Dorothee Baumann-Pauly and Justine Nolan ed.], Routledge: New York, pp. 51-63.

87. UNGPs, General Principles.

88. *Frequent Asked Questions*, *supra* note 82, p. 8.

89. *Ibid.*, p. 1.

Based on the UNGPs, the FIFA and IOC have gradually developed their sports rules protecting human rights. The FIFA creates two important provisions in its Statutes to accept the “legal obligations” to respect and protect internationally recognised human rights,⁹⁰ and to guarantee the equal treatment without any form of discrimination⁹¹: in particular, the former can be considered as a meaning that Article 3 of the FIFA Statutes accepts the implementation of the rights and obligations under the CRC within the FIFA regime on the ground that the CRC has been ratified by 196 states, and signed by the United States of America (as of 25 November 2019).⁹² Therefore, there is no doubt that it can be interpreted as “internationally recognised human rights” under Article 3 of the FIFA Statutes.⁹³

By the same token, the IOC has also developed human rights regime under the Olympic Charter (2019), the IOC Code of Ethics (ICE, 2018), and the Olympic Movement Medical Code.⁹⁴ According to the ICE, the IOC Ethics Commission is capable of creating implementing provisions for the ICE, in particular, the Basic Universal Principles of Good Governance of the Olympic and Sports Movement (hereinafter: Basic Universal Principles).⁹⁵ In terms of the ICE, Article 1.4 of the ICE prescribes that “[r]espect for international conventions on protecting human rights insofar as they apply to the Olympic Games’ activities”, and it enumerates the content of the human rights protections in particular: (1) “respect for human dignity”; (2) “rejection of discrimination of any kind on whatever grounds, be it race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status”; (3) “rejection of all forms of harassment and abuse, be it physical, professional or sexual, and any physical or mental injuries”. This provision can be interpreted as a meaning that the IOC has accepted the obliga-

90. FIFA States, Article 3.

91. FIFA States, Article 4.

92. See UN website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

93. However, the interpretation of the term “internationally recognised human rights” is still controversial because what kind of human rights can be considered as the “internationally recognised human rights”

94. Concerning child protection by the IOC, some authors normally cite the Olympic Charter and the Olympic Movement Medical Code. However, the purpose of this article is mainly to discuss human rights issue, so that I did not treat this instrument. See Robert Tomback & Clare Freshwater, “Are young Olympic athletes receiving adequate protection? Part 2”, published on 19 January 2016 (online : <https://www.lawinsport.com/topics/item/are-young-olympic-athletes-receiving-adequate-protection-part-2>).

95. ICE, Article 19.

tions under the international conventions of human rights within the Olympic movement.⁹⁶

To be precise, Article 6 of the Basic Universal Principles clarifies the obligations of sports federations within the Olympic Movement for the protection of human rights, especially for young athletes in the followings rights: (1) the right of athletes to participate in sports competitions, and the right to have a voice⁹⁷; (2) the right of young athletes to protection from economic exploitation⁹⁸; (3) the rights to life and development for all athletes including children⁹⁹ in particular the fight against doping¹⁰⁰; (4) reduction of the risk in sport through insurance service for all athletes¹⁰¹; and (5) the right to education developing, in particular “Sport and Studies” programmes.¹⁰²

In sum, it can be said that the CRC may impose the legal obligations on private actors via Article 3 of the FIFA Statutes and Article 1.4 of the ICE and the Basic Universal Principles that accept the rights and obligations under internationally recognised human rights treaties, and those provisions may open the path for an application of the CRC on the FIFA and IOC.¹⁰³ However, it should be carefully understood whether young athletes can directly bring a case before the international court. The reason is that, if international treaties set up individual applications, such as the ECHR, it can be said that the young athletes can have access to international court, but under the CRC, there is no provision for accepting the individual applications to the court.¹⁰⁴ Thus, young athletes cannot claim any complaints of the infringement of the CRC to the international court,

96. See ICE, scope of the application.

97. Basic Universal Principles, Principle 6.1.

98. *Ibid.*, Principle 6.2.

99. *Ibid.*, Principle 6.3.

100. *Ibid.*, Principle 6.4.

101. *Ibid.*, Principle 6.5.

102. *Ibid.*, Principle 6.7.

103. Nafziger argues that the IOC has international legal personality under international law. Nafziger argues that “the IOC “manifests traits and actions characteristic of international organizations” on the ground that the IOC and the Swiss Federal Council made an agreement which is similar with the Agreement between the ICRC and the Council. James A.R. Nafziger (2004), *International Sports Law, Second Edition*, Transnational Publishers: New York, pp. 25-26; However, it seems me that the IOC did not involve the creation of international treaties, such as 1949 Geneva Conventions by the ICRC that played a central role to adopt the Geneva Conventions. Therefore, the IOC should be considered as the private association under Swiss Civil Code, and not be accepted its international legal personality.

104. Souji Yamamoto (1994), *Kokusaihō shinnban*, Yuhikaku, pp. 534.

such as the International Court of Justice (ICJ) or some other international bodies, for instance the Committee on the Rights of Child. It would seem, however, that they may claim the infringement of the child rights under the CRC against the FIFA and IOC before the FIFA judicial bodies as well as the CAS through the application of Article 3 of the FIFA Statutes, and Article 1.4 of the ICE and its implementing provisions, and of course against the Contracting States before national courts as well.

Conclusion

This article has considered an important question as to how we can protect young athlete's human rights under the CRC. To answer this question, the first chapter pointed out the following five rights in sport under the CRC: (1) the rights to life and development; (2) the right to protection against all forms of violence; (3) the rights of children with disabilities; (4) the right to education; (5) the right to protection from economic exploitation.

According to the FIFA and IOC practice, the FIFA has already developed its initiative to protect the child rights under the CRC in accordance with the *Child Safeguarding Toolkit for Member Associations*, which clearly describes that the purpose is to set up "minimum requirements for all members on child safeguarding"¹⁰⁵; by contrast, the IOC has not published a comprehensive instrument to enhance child rights protection under the CRC.

In conclusion, the CRC may impose legal obligations on the FIFA and IOC to implement the child rights, via Article 3 of the FIFA Statute, and Article 1.4. of the ICE and its implementing provision. Under this understanding, it can be considered that the FIFA and IOC have the same obligation to respect and protect child rights under the CRC as the Contracting States: while the obligation to respect is to avoid interfering with the enjoyments of child rights, the obligation to protect is to take appropriate measures to prevent the infringement of child rights. Furthermore, the hierarchical characteristic of sports federations would lead to occur binding effects on all members of national federations within the FIFA family and the Olympic Movement.¹⁰⁶ In this sense, all sports federations within the FIFA family and the Olympic Movement must respect and protect the child rights under the CRC. In addition to that, it seems me that the young athletes may claim some "legal remedies" to recover the infringement of the youth athlete's rights before the FIFA judicial bodies, the CAS and national courts.¹⁰⁷ In this sense, if young athletes claim an infringement of the child rights guar-

105. *Child Safeguarding Toolkit for Member Associations*, *supra* note 7, p. 6.

106. See FIFA Statutes, Article 14; see also Olympic Charter, Rules, 1, 25, 27.

107. They also can appeal to the ECtHR, but it is not a case of the CRC. See, *Mutu et Pechstein c. Suisse*, arrêt du 2 octobre 2018, requêtes nos 40575/10 et 67474/10, CourEDH.

anteed by the CRC through Article 3 of the FIFA or Article 1.4. of the ICE, in particular, the FIFA judicial bodies and the CAS should necessarily consider whether it exists the infringement of human rights under the CRC, because these sports rules may be invoked at the proceedings of the FIFA judicial bodies and the CAS. However, in this article, I cannot deeply take into account the content of each right in the context of sports, and therefore this task will be examined in a subsequent article.

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