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Section 1: Introduction

Human rights are generally considered rights that people deserve purely because of being human, that also enjoy an indiscriminative, and universal character, and seek to protect human beings regardless their nationality, place of residence, sex, national or ethnic background, colour and/or religion.

However, human rights in sports setting, is not a topic that is frequently discussed among scholars, yet international sporting competitions are amid the most anticipated followed events in the world. Nevertheless, away from the centre of attention, sports can play a very important role in the day-to-day life of anyone who participates in different disciplines from recreational to high performance and competitive settings, thus, sports can also have a negative impact in peoples' lives as the gruelling experiences of many elite athletes in sports, often starts at a very young age, particularly in the demanding and intensive world of high-performance sports where participants are required to train for long periods of time, many days a week to fulfil the performance standard of coaches and sport institutions.¹ Unfortunately, in several situations and places, the main recreational and educational side of the sport is put aside and instead, participants including children and young adults seem trapped in a vicious circle of exploitation, jeopardising the participant's right to an open future.²

In addition, sports have been the subject of a "win-at-all-cost culture" which plays an important role in this discussion, where negative behaviours in a coach-controlled training seems to have been normalized, making mistreatment and harm a common act in sports, as well as the critical imbalance of power and the culture of fear and silence that children and young adults experience throughout their careers.

Moreover, a predominant issue in this sphere relates to the normality in which human rights violations are being carried, mostly by the head of sports, including coaches,

¹ Shafagh Malekzade Saghezchi and Dr Manuchehr Tavassoli Naini, 'A Legal approach to the Interaction between Sports and Human Rights' [2016] 7(3) Mediterranean Journal of Social Sciences ISSN 2039-2117 accessed 9 August 2022.

² Gabriela Izabela Tymowski, 'Rights and Wrongs: a philosophical consideration of children's participation in elite sport' [December 2002] (a thesis submitted to the University of Gloucester Faculty of Environment and Leisure) <https://core.ac.uk/download/pdf/51145318.pdf> accessed 22 June 2022.

sports agents, sports stakeholders, and people in sports management positions that often turn the blind eye to these acts, waving responsibility.³

It is however important to stress that nowadays the culture of sports is changing towards the recognition of athlete's rights,⁴ nevertheless, scholarly analysis of the violation of fundamental human rights of children and adults in competitive sports remain incomplete, therefore this paper seeks to evaluate the responsibility of the State to identify, recognise and fight human rights violation, considering any institutional changes that would allow States to develop a good camp of protection to high-performance athletes, addressing their rights as human beings and prohibiting any violations of human rights when forming part of a high-performance team of a sport.

To this end, section 2 will consider human rights in order to contextualise the abuse that young athletes suffer within the legal framework of human rights violation, considering different text, treaties and conventions that encourage States to act in light of the protection of human rights. Additionally, the cultural risks that the practice withing elite sports bring to the table, analysing different types of maltreatment, such as emotional, physical and sexual abuse, and the relationship with the United Nations conceptualization of maltreatment under treaties and human rights conventions that embodied and consider these acts as human rights violations, as well as, the importance of considering economic exploitation, child labour, child trafficking and neglect what this paper will be addressing as a growing nest of cultural risks in sports settings that clearly affect the wellbeing of human beings and specially young athletes. Moreover, this paper will address the link between the aforementioned scenarios and situations and a win-at-all-cost culture that has been present for decades in elite sports and pushes young high-performance athletes to acquire a culture of abuse as rather ordinary in regard to the coach-athlete relationship through considering different reports made by high performance sporting institutions and past cases where young elite athletes have been directly affected.

³ Carmen Pérez González, 'The effective application of international human rights law standards to the sporting domain: Should UN monitoring bodies take central stage?' [2022] 22(1) The International Sports Law Journal <https://doi.org/10.1007/s40318-021-00209-8> accessed 24 May 2022.

⁴ Paulo David, 'Children's Rights and Sports' (1999) 7 Int'l J Child Rts 53.

Furthermore, section 3 will discuss the existing policies and reforms that address all types of situations that constitute as human rights issues in high performance sports settings, considering the work of regional and international organisations and the statements and report of a former United Nations Special Rapporteur, in addition to addressing the importance of contemplating different organisation's work to help shape current or future soft law instruments in regards to the human rights sphere in elite sports settings. Moreover, this section will consider some sport institution's work at an international level and their impact in the development of the inclusion of human rights framework within their range and how their work has impacted in the protection of human rights towards young elite athletes, through the regulations that have been created within their scope.

Lastly, section 4 will address the connection between the doctrine of State responsibility and violation of human rights, firstly, evaluating the due diligence framework according to the law of State responsibility in the Human rights' field, as well as considering the bindingness and State's compliance of human rights instruments, likewise, this section will discuss the importance of the doctrine of business in human rights. Correspondingly, this section will address the latter by analysing the codification of the rules on State responsibility by the International Law Commission, in addition to discussing the pertinent human rights conventions, case law, published studies, and international law instruments that have helped shape the human rights framework in the world of high-performance athletes.

Section 2: Human Rights and cultural risks in high-performance sports settings

2.1 Human Rights in high-performance sports settings

According to the United Nations, human rights are inherent to human beings regardless of their nationality, sex, ethnic origin, religion, or language. In addition, human rights are considered Universal, meaning that all human beings are equally entitled to the enjoyment of these rights, likewise, the principle of inalienability of these rights is based on these not being taken away unless some exceptions such as the right to liberty which may be restricted in regards of any criminal procedure in a national territory.⁵ Consequently, the indivisible character of these rights is based on these not being able to be enjoyed fully without the other making them interdependent, and inalienable as well as unconditionally and unalterably, no matter their legal acceptance.⁶

Additionally, it is widely recognised that the formation of elite athletes starts at a very young age, therefore, this paper will consider the experiences of athletes since their childhood to their young adulthood, likewise, this section will focus on the different experiences a young athlete goes through, considering different scenarios that have allowed high performance sports to grow a nest of cultural risks where high performance athletes are often exposed to hideous situations such as, maltreatment, different types of abuse, exploitation, doping, and child trafficking, and how these constitute to human rights violations, in addition, this section will discuss in dept, the relevant texts that are part of International Law and link the aforementioned circumstances with the set of human rights imprinted in them.

Accordingly, the Universal Declaration of Human Rights in 1948 adopted by the United Nations (UNUDHR) aims for its universal application, despite not being

⁵ OHCHR, 'What are human rights?' (United Nations Human Rights, Office of the High Commissioner) <https://www.ohchr.org/en/what-are-human-rights> accessed 30 August 2022.

⁶ Gabriela Izabela Tymowski, 'Rights and Wrongs: a philosophical consideration of children's participation in elite sport' [December 2002] (a thesis submitted to the University of Gloucester Faculty of Environment and Leisure) <https://core.ac.uk/download/pdf/51145318.pdf> accessed 22 June 2022 & Joel Feingberg, "Some Conjectures about the Concept of Respect" [1973] 4(2) Journal of Social Philosophy <https://doi.org/10.1111/j.1467-9833.1973.tb00163.x> accessed 5 July 2022.

recognized within legal codes in some Nations, provides a framework that embodied essential needs and interests.⁷ Thus, on 20 November 1989, the United Nations General Assembly adopted the Convention on the rights of the Child (UNCRC), although it does not tackle directly the issue of children involved in sports, it recognizes the specific status of children, and seeks to guarantee their rights as members of society.⁸ Further, the International Covenant on Civil and Political rights (ICCPR) adopted by the General Assembly on 16 December 1966 and which recognises the inherent dignity and the equal and inalienable status of rights of all members of the human family as the foundation of freedom, justice and peace in the world.⁹

With the aforementioned statutes in mind, the paper proceeds to consider some of the specific rights that athletes experience violations of; primarily considering that the UNCRC recognises that child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier,¹⁰ moreover, the participation in sports is widely recognised as a Human right under the terms of the UNDHR, as is an important component to the participation in the cultural life of the community, as established in its article 22 UNCRC.¹¹ Added to it, article 5 refers to the protection against torture or cruel, inhuman or degrading treatment or punishing,¹² considering that according to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment of 1984, inhuman treatment or punishment causes intense physical or mental suffering which often includes serious physical and emotional abuse in any scenario,¹³ which will be discussed later in relation to sports settings.

⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

⁸ UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74.

⁹ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

¹⁰ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 1.

¹¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Article 22.

¹² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Article 5.

¹³ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

Moreover, is necessary to address the five basic principles of the UNCRC, starting with, article 2, the right of the child to non-discrimination, article 3, the primary consideration of the best interest of the child, article 5, guarantees young people a progressive autonomy that should develop in the context of the rights, responsibilities and obligations of parents, or any other person in charge of their care, article 6, the right of the child to life, survival and development, and article 12, the right of the child to have their opinions taken into consideration in all decisions affecting them.¹⁴ Ultimately, its fundamental focus is to guarantee a great development and progressive empowerment of children, providing an extensive range of safeguards that ensure the protection from all forms of abuse, violence, exploitation, and neglect.¹⁵

Furthermore, as is established in article 19.1 UNCRC the “State parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child against 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.”,¹⁶ highlighting that given that coaches may become the main caregiver since children and young athletes often spend more time with sports coaches than with their parents or guardians.¹⁷ Likewise, article 19.2 refers to the State’s responsibility in the establishment of “social programmes to provide necessary support for the child and for those who have the care of the child, in addition to other forms of prevention and the reporting, investigation and identification and treatment of instances of child maltreatment”.¹⁸

In other order of ideas, despite having discussed the rights that children and adults enjoy as human beings respectively, when it comes to high performance sports, there are certain situations that athletes have been put through, in which case this paper will address the relation between the beforementioned human rights provisions

¹⁴ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> articles, 2,3,5,6, and 12.

¹⁵ Paulo David, Human Rights in Youth Sport (Routledge 2005) p20.

¹⁶ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 19.1.

¹⁷ Paulo David, Human Rights in Youth Sport (Routledge 2005) p56.

¹⁸ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 19.2.

and the cultural risks that are part of sports in a day-to-day basis, affecting the lives and well-being of children and adults.

It is also not a secret that sports have developed in a speedy way since 1970, it all evolved from amateurism to being brought to the big screen and making many sports to move into professionalism, which certainly allowed athletes to improve the quality of their preparation and training, however, it also permitted the need for sports teams to reduce the age of athletes who were called to train and represent national teams in competitive scenarios.¹⁹ For instance, gymnastics is a good representation to the evolution of high-performance sports as the average age of the best gymnasts in Europe in 1965 dropped from 25 years old to 20 in a 4 years range to 18 in 1973,²⁰ and in 1973, however, Nadia Comaneci was only 14 when she obtained her first 10 at the Montreal Olympic Games and ever since, she has been the symbol of “baby-trained” champions to what now-a-days the average age of a female gymnast that compete in the senior category of high-performance scenarios as world championships and Olympic games sets between 16 and 17 years old.²¹ Generating a great issue in regards to exposing children and young athletes to difficult situations throughout their careers which involved maltreatment in different scenarios.

2.2 Cultural risks in high performance sports settings

2.2.1 Maltreatment in sports settings: including emotional, physical, and sexual abuse

In terms of maltreatment, it has been defined as “volitional acts that result in or have the potential to result in physical injuries and/or psychological harm and can result from acts of omission like neglect or commission or abuse”.²² Additionally, the World health organisation (WHO) defines maltreatment against children in a wider manner considered as “All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual

¹⁹ Paulo David, *Human Rights in Youth Sport* (Routledge 2005) p16.

²⁰ Baumann, E. (1976) *Le grand livre des Jeux Olympiques: Montréal 1976* (The big book of the Olympic Games: Montreal 1976), Künzelsau, Germany: Sigloch. p26.

²¹ Leglise, M. (1997) ‘The protection of young people involved in high-level sport, Limits on young gymnastics’ involvement in high level sport, Strasbourg: Committee for the Development of Sports, Council of Europe. p8.

²² Crooks, C. V., & Wolfe, D. A. (2007). Child abuse and neglect. In E. J. Mash & R. A. Barkley (Eds.), *Assessment of childhood disorders* (pp. 639–684). The Guilford Press.

or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power".²³ In accordance to these definitions, this section seeks to expand the situations in which high-performance athletes, including children and youth, are exposed during their careers, therefore, is important to note the relationship with different types of abuse that count as maltreatment in conjunction with what is established by the UNCRC, for instance, article 19.1, refers to the responsibility of the State in taking "all appropriate legislative, administrative, social and educational 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".²⁴

Primarily, emotional abuse is known as the patten of deliberate non-contact behaviours within a critical relationship between an individual and caregiver, also understood as a highly common form of child abuse.²⁵ Hence, this term also allows to consider verbal abuse, emotional neglect, emotional violence, and psychological abuse, as part of the definition.²⁶ Accordingly, In the elite sports' sphere, the line between training and abuse can become blurred, and although for many years athletes have identified and spoken out about sexual abuse in this environment, other types of abuse have become part of the culture in high performance sports, due to the lack of awareness in differentiating though or intensive training and abuse.²⁷

Also, in this category, body shaming is considered a form of emotional abuse, reflected when athletes do not fit the perceived "ideal body type" for the sport's discipline, this can result in long-term trauma. However, this can also be caused by the social perception of perfection in sport's settings.²⁸ For instance studies made by

²³ WHO, 'Child maltreatment' (Worlds Health Organisation, 8 June 2020) <https://www.who.int/news-room/fact-sheets/detail/child-maltreatment> accessed 13 July 2022.

²⁴ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> Article 19.1.

²⁵ Ashley E. Stirling & Gretchen A. Kerr (2008) Defining and categorizing emotional abuse in sport, European Journal of Sport Science, 8:4, 173-181, DOI: 10.1080/17461390802086281.

²⁶ Celia Doyle, 'Emotional abuse of children: Issues for intervention' [1998] 6(5) Child abuse review [https://doi.org/10.1002/\(SICI\)1099-0852\(199712\)6:5<330::AID-CAR355>3.0.CO;2-C](https://doi.org/10.1002/(SICI)1099-0852(199712)6:5<330::AID-CAR355>3.0.CO;2-C) accessed 14 July 2022.

²⁷ Ashley E. Stirling & Gretchen A. Kerr (2008) Defining and categorizing emotional abuse in sport, European Journal of Sport Science, 8:4, 173-181, DOI: 10.1080/17461390802086281.

²⁸ Samantha Sloman, 'Body Shaming athletes is a form of mental abuse' (Global Sport matters, 9 October 2019) <https://globalsportmatters.com/health/2019/10/09/body-shaming-athletes-a-form-of-mental-abuse/> accessed 1 July 2022.

the University of Toronto based in interviews with former female Canadian national team athletes revealed that some behaviours reflected severe post-traumatic stress disorders requiring the young adults to seek psychological assistance to help beat the traumatic experiences. These experiences include body shaming in different ways, including degrading comments, body and weight monitoring and extreme food and water restrictions.²⁹

Consequently, when talking about emotional abuse in sports, there has not been a great number of studies in this topic as culturally, the importance has been minimized. Nevertheless, it is necessary to add to this definition, the types of scenarios that are consider affecting the emotional stability of athletes, thus, studies reveal a clear difference between physical behaviours and verbal behaviours that constitute to this definition of emotional abuse in sports,³⁰ for instance, when referring to physical behaviours, these include acts of aggression committed by the coach, such as hitting and throwing objects either to athletes or in the presence of them, and this often relates to what physiologist referred to, as a poor anger management of coaches, in addition, the verbal abuse behaviours consist of yelling and shouting at athletes, name-calling, humiliating, belittling, and degrading comments in situations where a performance is not achieving the coaches' expectations.³¹ It is however, important to note that the aforementioned acts of violence, often form part of a sport culture where physical punishment is considered intensive training and coaches do not differentiate one another,³² which goes against article 7 of the ICCPR that establishes that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."³³

²⁹ Jelena Damjanovic, 'Elite female athletes subjected to degrading comments, body shaming: U of T study' (University of Toronto News, October 6 2021) <https://www.utoronto.ca/news/elite-female-athletes-subjected-degrading-comments-body-shaming-u-t-study> accessed 1 July 2022.

³⁰ Anne Stafford and others, 'There was something that wasn't right because that was the only place, I ever got treated like that': Children and young people's experiences of emotional harm in sport' [2015] 22(1) The University of Edinburgh/NSPCC Child Protection Research Centre, UK DOI: 10.1177/0907568213505625 accessed 5 July 2022.

³¹ Ashley E. Stirling & Gretchen A. Kerr (2008) Defining and categorizing emotional abuse in sport, *European Journal of Sport Science*, 8:4, 173-181, DOI: 10.1080/17461390802086281.

³² Joan E Durrant, 'Physical punishment of children in sport and recreation' [2010] 17(2) *Research Gate* https://www.researchgate.net/profile/Joan-Durrant/publication/237338864_Physical_punishment_of_children_in_sport_and_recreation/links/00b7d51c88619721b7000000/Physical-punishment-of-children-in-sport-and-recreation.pdf accessed 10 August 2022.

³³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, article 7.

Furthermore, historically, physical abuse has been the most visible form of maltreatment, as it is easy to identify, and its definition may be wide as it goes from determine a violent act (physical) infringed to a person with the intention to cause harm to non-contact physical abuse can come from punishments or actions that can cause physical discomfort, and not necessarily have to involve physical contact from a person.³⁴ Moreover, scholars argue that sexual harassment and abuse occur in all sports and at all levels, nevertheless, it has a noticeable increased risk at elite or high-performance level.³⁵ Nevertheless, the concept of sexual violence is often used as a broad conceptualization to include a continuum of different behaviours, ranging from sexual harassment without body contact, to transgressive behaviours, to sexual violence with body contact.³⁶

Despite all the benefits that sports can bring to the table, all too often it is seen as an opportunity to perpetuate sexual acts of violence, mostly against children, with coaches and sports agents or members of sports' teams, abusing their power over athletes, and commit heinous acts that affect both the physical and mental well-being of the athlete,³⁷ thus, this is achieved through what is determined as the *grooming process* where people (often coaches or other members of a sports team) in power made use of strategies to persuade children to engage in sexual activities, highlighting that the perpetrator establishes a trustworthy relationship with the athlete(s)'s family in a way that gets immunity against accusations.³⁸ Accordingly, the scenarios where an athlete can be involved in a situation in which the coach makes use of their power against them, often relate to sexual harassment, for instance, a flirting-charming coach would give feedback only to the athletes that respond to their acts, excluding athletes that chose to keep away from these kinds of behaviours, hence coaches that take advantage of the athletes' need for supporting and spotting to touch private parts. Likewise, this power is reinforced when coaches

³⁴ Emma J Kavanagh, 'The Dark side of Sport: Athlete Narratives of Maltreatment in High Performance environments' [August 2014] A thesis submitted in partial fulfilment of the requirements of Bournemouth University for the degree of Doctor of Philosophy p 16.

³⁵ Saul Marks & others, 'Sexual harassment and abuse in sport: the role of the team doctor' [2012] 46 British Journal of Sports Medicine 905-908.

³⁶ Sonja Gaedicke & others, 'Sexual Violence and the Coach–Athlete Relationship—a Scoping Review from Sport Sociological and Sport Psychological Perspectives' [2021] 3(1) Frontiers in Sports and Active Living <http://dx.doi.org/10.3389/fspor.2021.643707> accessed 9 August 2022.

³⁷ Volkwein-Caplan K, Schnell F, Devlin S, et al. 'Sexual harassment of women in athletics vs academia'. [2002] 8 Journal of Sexual Aggression 69–82.

³⁸ David Finkelhor. Child Sexual Abuse: New Theory and Research. New York: Free Press, 1984.

are found to have committed serious violent or sexual offences and have not been punished for it.³⁹

Moreover, considering the different types of abuse a young athlete may be exposed to, is important to bring to the discussion some of the situations that have affected children globally, for instance, Peng Shuai, a Chinese professional tennis player accused the former vice premier Zhang Gaoli of sexual assault, and besides taking the effort to become public with her story, the Chinese government which should open an investigation and consider the allegations of the athlete, kept silence in regard to the story, nevertheless, this act of bravery allowed other athletes to come clean and tell their stories.⁴⁰

Additionally, the United States Women's Gymnastics team, have highlighted heinous cases of sexual abuse in the past few years, involving them as group of elite athletes, that have been put through a situation of sexual abuse within their sporting environment, caused by the former USA Gymnastics national team's doctor, where over 265 complaints have been made against his persona across 14 years of his career, and which according to a report from the US justice department's Office of the Inspector General revealed a number of cover-ups by FBI agents which allowed the former US national team doctor to continue his abuses for over a year after a case against him first opened in 2015.⁴¹ Likewise, in 2020, a number of Haitian female footballers accused the president of the Haitian Football Federation Yves Jean-Bart of sexual assault which included the need of an abortion of one of the team members as result a rape by the latter, and where the Haitian government's investigation did not result in any charges against the latter.⁴²

³⁹ Helen Owton, 'We must challenge the culture of silence about child sexual abuse in football' (The Conversation, 25 September 2016) <https://theconversation.com/we-must-challenge-the-culture-of-silence-about-child-sexual-abuse-in-football-69377> accessed 29 June 2022.

⁴⁰ Steven Lee Myers, 'A Chinese Tennis Star Accuses a Former Top Leader of Sexual Assault' (New York Times, 3 November 2021) <https://www.nytimes.com/2021/11/03/world/asia/china-metoo-peng-shuai-zhang-gaoli.html> accessed 16 June 2022.

⁴¹ Holly Honderich, 'Simone Biles and others to sue FBI for \$1bn over Larry Nassar investigation' (BBC News, Washington, 8 June 2022) <https://www.bbc.co.uk/news/world-us-canada-61735319> accessed 17 June 2022.

⁴² Mia Alberti, 'Haiti's soccer chief banned for life for sexual abuse of young football players' (CNN Sports, 21 November 2020) <https://edition.cnn.com/2020/11/21/football/yves-jean-bart-haiti-soccer-chief-banned-spt-intl/index.html#:~:text=On%20Friday%2C%20the%20US%20embassy,did%20not%20result%20in%20charges.%E2%80%9D> accessed 16 June 2022.

Having considered the latter situations and circumstances where different types of abuse are described by elite athletes, it can be seen that the culture of sports have grown what this paper address as a nest of cultural risks that rather challenge the well-being of children involved in high-performance sports which goes against article 19 of the UNCRC, discussed previously in reference to the use of violence against a child or young person, which goes far beyond the acceptance and justifiability, in addition to the lack of investigation and respond by the pertinent authorities to address the aforementioned issues.⁴³

Notwithstanding, while recognising the many benefits to the health and wellbeing that sport participation brings to the table for children and young adults,⁴⁴ it has been discussed above the multiple form of inhuman treatment, exploitation, and a few different types of abuse throughout their careers as part of a competitive sports, that have been known about for many years, but for a number of reasons they have not been labelled as abuse or dealt with as misdemeanours, and this is often due to a culture of resilience in sports have acted as a mask to the sufferings that some athletes experience as part of their sports participation.⁴⁵

2.2.2 Economic exploitation, child labour and neglect in sports settings

Accordingly, another significant factor in this section is the exploitation and neglect or negligent treatment in sports settings, which are considered form of abuse according to WHO. Moreover, in terms of negligent treatment, this is defined as allowing a child athlete to participate in a training or competition while injured ignoring medical advice constitute a form of neglect,⁴⁶ In addition, given the early age at which children begin to train in sports and becoming an elite athlete at a young age, in many cases, young athletes are not yet able to understand the implications of organised intensive training (or even if so, not always in a position to do something about it) making the

⁴³ UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74, article 19.

⁴⁴ Eime, R.M., Young, J.A., Harvey, J.T. et al. A systematic review of the psychological and social benefits of participation in sport for children and adolescents: informing development of a conceptual model of health through sport. *Int J Behav Nutr Phys Act* 10, 98 (2013). <https://doi.org/10.1186/1479-5868-10-98>.

⁴⁵ Emma J Kavanagh, 'The Dark side of Sport: Athlete Narratives of Maltreatment in High Performance environments' [August 2014] A thesis submitted in partial fulfilment of the requirements of Bournemouth University for the degree of Doctor of Philosophy p29.

⁴⁶ Kristine Fortier and others, 'Child maltreatment in sport: smashing the wall of silence: a narrative review of physical, sexual, psychological abuses and neglect' [2019] *British journal of sports medicine* 2020 4-7.

child particularly vulnerable to exploitation when surrounded by competitive parents and coaches, which may result in a violation not only of article 24 of UNCRC concerning a child's right to enjoy the highest attainable standard of health, but also a violation of article 31 of the UNCRC regarding the child's right to rest and leisure.⁴⁷

Furthermore, according to World Players Association's 2021 CARE Report, 51 percent of elite athletes had experienced economic exploitation when they were under the age of 18.⁴⁸ Which takes us to article 32 UNCRC that specifically concerns "the right of children to be protected from economic exploitation and any work that is likely to be hazardous, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development",⁴⁹ and given that children that are involved in competitive sports often train for long hours every week for years, in the same way that a worker, high performance athletes spend six to 9 hours of daily intensive training, to what scholars refer to training under highly "worklike" conditions for immediate or potential remuneration, for instance, it is possible for children with international ranking in sports to be considered (given that there is no minimum age limit for the receipt of government funding) for sponsorships or professional contracts with lucrative rewards,⁵⁰ and although scholars are inclined to an opinion that only sees the link between child labour and training long hours with a monetary remuneration, it is necessary to consider that there are several elite athletes that train and compete representing a country and do not receive any monetary remuneration since the responsibility has been taken and considered as recreational for the child, even when it does not represent the right to rest and leisure under UNCRC. Nevertheless, the latter goes against the International Labour Organization (ILO) Convention No. 138 on Minimum age for admission to employment,⁵¹ in addition to the fact that parents may benefit

⁴⁷ Siri Farstad, 'Protecting Children's Rights in Sport: The use of minimum age' [2006] Institut universitaire Kurt Bösch (Sion), Université de Fribourg <https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2007/childrensrighinsport.pdf> accessed 22 July 2022.

⁴⁸ CARE, 'The 2021 CARE Report (Census of Athlete Rights Experiences)' (Census of Athlete Rights Experiences, 2021) <https://worldplayerscare.co/2021-report> accessed 22 July 2022.

⁴⁹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 32.

⁵⁰ Peter Donnelly, 'Child Labour, Sport Labour: Applying child Labour laws to sport' [1997] 32(4) International Review for the Sociology of Sport 389-406.

⁵¹ International Labour Organization (ILO), Minimum Age Convention, C138, 26 June 1973, C138.

from their child's economic success also indicates elite sport performed by children may be assimilated to child labour.⁵²

2.2.3 Child trafficking in sports

According to OHCHR, trafficking in persons refers the transportation, recruitment, transfer, harbouring, or receipt of persons, by force, coercion, fraud, or some other form of deception, for the purpose of exploitation; these practices that are associated with trafficking are prohibited under international human rights law, which prohibits slavery, child sexual exploitation, and enforced prostitution to mention a few, which are considered human rights violations.⁵³

There is also a further point to be considered, which is a widely known form of child trafficking through sports, specifically football players, that face being trafficked from Africa, South America and Eastern Europe, with the aim to scouts them to professional football clubs in western Europe,⁵⁴ thus, a situation that has been present since 1990 where sporting scouts recruited children, in order to sign exclusive contracts with parents or guardians, who often are part of a poverty environment, and are in need of a life changing opportunity, therefore, are being taken advantage of by bringing their children to European countries for trials playing on the club's youth teams.⁵⁵

In this way, it has been found that the trafficking of migrant athletes, mainly children, is a prevalent problem that occurs across the globe and highly affects the sports industry. In this matter, scholars note that "trafficking in sports is a form of labour trafficking involving clandestine networks of actors that includes agents, intermediaries, and powerful sports bodies who often exercise control and ownership

⁵² Romana Weber, 'Protection of children in competitive sport: some Critical Questions for London 2021' [2009] 44(1) International Review for the Sociology of Sport 10.1177/1012690208101485 accessed 22 July 2022.

⁵³ OHCHR, 'About human rights and trafficking in persons ' (United Nations Human Rights, Office of the High Commissioner) <https://www.ohchr.org/en/trafficking-in-persons> accessed 28 July 2022.

⁵⁴ Ini-Obong Nkang, 'Europe's search for soccer's next big star is driving a modern-day slave trade' (Quartz Africa, 14 August 2019) <https://qz.com/africa/1687177/european-football-drives-modern-slave-trade-of-young-africans/> accessed 29 July 2022.

⁵⁵ Kingsley Kobo, 'Young Footballers Are Getting Scammed and Trafficked Overseas' (Vice, 4 April 2022) <https://www.vice.com/en/article/y3vjm7/african-football-trafficking> accessed 9 August 2022.

of young athletes”.⁵⁶ Consequently, considering that this situation brings with it that children who did not make it into the club’s teams, are not returned to their homes, the UNCRC contains articles that support the rights of children that have been jeopardised, specifically, is important to consider the right to life (article 6), the guarantees of the child’s right to family life including protection against separation from their family when this is not “in the best interests of the child” (articles 9 and 10), the right to health (article 24), the right to an adequate standard of living (article 27), and the right to an education (articles 28 and 29).⁵⁷

In addition, a finding exposed Belgium as one of the worst offenders in regards to child trafficking,⁵⁸ where in a paper given to an International Organization of for Migration (IOM) meeting, Belgian Senator Paul Wille noted that one of the biggest issues of scouting and importing football players from the areas mentioned before to sell them on the European market, surrounds that young athletes that did not receive a permanent contract in a football team, ended up illegal on the streets, facing homelessness and prostitution,⁵⁹ which is considered a way of children trafficking.

Consequently, the exploitative nature of trafficking in sports is not always very clear, and often, many cases seem not to fall within the scope of the UN’s definition of human trafficking. However, scholars consider various degrees of exploitation, deception and coercion, as it is known that many athletes or their parents/guardians consent to their transport to other parts of the world in order to achieve an international career in sports, these young athletes often encounter different types of exploitation along the road, such as sexual exploitation, prostitution, child pornography, bringing to the table the link between the sale of children in the sports settings and child labour,⁶⁰ which goes against articles 32 and 35 of the UNCRC

⁵⁶ Darragh McGee, Labour exploitation and child trafficking in sport. in Quayson, a & Arhin, A (eds), Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit flows (New York: Routledge 2012) 71-90.

⁵⁷ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> Articles 6, 9, 10, 24,27,28 and 29.

⁵⁸ Leonida Krushelnycky, 'Belgium's Football 'slave trade'' (BBC news, 10 March 1999)http://news.bbc.co.uk/1/hi/special_report/292958.stm accessed 26 July 2022.

⁵⁹ Paul Wille, ‘Future Policies on Prevention and Trafficking of Human Beings in Europe’ (p.5), paper presented at IOM-Conference on Prevention of and fighting against trafficking in human beings with particular focus on enhancing co-operation in the process to enlarge the European Union (2002).

⁶⁰ University of Nottingham, 'The Problem of Sports Trafficking: setting an agenda for future investigation and actions' (Rights Lab, August 2021) <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/august/the-problem-of-sports-trafficking.pdf> accessed 28 July 2022.

which prohibit “all work that may affect the development of a child and the sale of children in any form”.⁶¹ Nevertheless, to tackle this great issue, is not enough for States, sport organisations and NGOs to recognise the happenings that are affecting several young athletes, it is needed that the latter also act for the protection of the aforementioned rights.

2.3 Win at all costs

Having previously discussed the different types of abuse, such as emotional, physical, and sexual, including child trafficking and child exploitation in sports settings, we now proceed to discuss in this section the particularity in high performance sports, in terms of the culture of win-at-all cost which comprehend a culture of abuse, silence and normalisation of abuse in a coach-athlete relationship. Highlighting how much is an athlete able to sacrifice to win, whether their reputation, freedom, dignity, and persona, including the violation of their human rights.⁶²

It is unfortunately, that considering all the benefits that sports bring to the life to athletes, the culture of win-at-all costs hides certain issues that elite athletes face through their careers, including the acceptance of abusive practices as necessary to obtain good results in sports events. Nevertheless, these practices not only require long hours of training and a life of dedication to the discipline, it also demands athletes to tolerate abuse, learning to accept extreme discomfort and pain, and most importantly, suppress vulnerability, making these situations becoming part of the norm for elite athletes that not only learn this behaviour but are expected to comply to strict expectations of obedience, minimize their needs and showing deference to authority, knowing that often the abusers are the people in authority, are pushed to remain in silence against any type of injustice with the only purpose to be kept as part of a team,⁶³ which violates article 19(2) of ICCPR as it states that everyone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either

⁶¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> Articles 32 and 35.

⁶² Christian Pszyk, 'Win at all cost?' (The British psychological society, 8 July 2021) <https://thepsychologist.bps.org.uk/win-all-costs> accessed 29 June 2022.

⁶³ Dr Victoria Roberts, 'Abuse in Sport: bad apples or bad barrels?' (Pursuit, 7 January 2020) <https://pursuit.unimelb.edu.au/articles/abuse-in-sport-bad-apples-or-bad-barrels> accessed 30 June 2022.

orally, in writing or in print, in the form of art, or through any other media of his choice” which means that any person have the right to speak out about any situation that affects them, without fear of punishment may be applied to them.⁶⁴

In addition, the multi-million-dollar contracts play a big role in the athlete’s well-being as it maximises the pressure and puts the mental well-being in threat, nevertheless, takes away the educative and recreational side of the sport, including the motivation which is a key element that often is lost when young athletes are pushed hard by adults and quit sports with serious emotional and physical problems.⁶⁵

2.3.1 Doping as a part of the culture of win-at-all costs

In this matter, article 7.4 of the international charter of physical education and sports refers in its text to the harmful effects of doping, being these not only injurious to health but also contrary to sports ethics, thus, in order to protect the physical and mental health of athletes, likewise the rights of people participating in sports settings at any level, it is pointed out by this charter the crucial role that States including national and international authorities to ensure that this dangerous practices is not taken place in sports settings, as well as, abide by the anti-doping measures set out by the International Olympic Charter against Doping in Sport.⁶⁶

Nevertheless, the use of drugs that are used to help improve performance in a sport is one of the many issues elite sports accommodate for decades, and especially when it comes to the win-at-all-cost culture in high performance sports, teenagers and young adults feel pressure by the wish to excel in their discipline, and most importantly, even though this practice is illegal, athletes have often claimed they feel pushed by their parents and coaches putting them under pressure, which often causes athletes going that extra mile and risking their life and places in sport to accelerate their evolution in the team and improve their performance in a quicker

⁶⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 19(2).

⁶⁵ Paulo David, 'Children's Rights and Sports' (1999) 7 Int'l J Child Rts p53.

⁶⁶ UNESCO “International Charter of physical education and Sport” (Adopted by the General Conference as its 20th session, Paris, 21 November 1978) https://en.unesco.org/sites/default/files/sport_e.pdf.

way.⁶⁷ In addition, the latter can also occur forcefully, under the coach's influence or without being aware of what are they taking.⁶⁸ Likewise, is also important to highlight what constitute as sources of pressure that athletes go through, starting with the coaches' demand to perform at 100% at all times, following with the parents' expectations for their children to be the best within the team, likewise the different competitions that athletes do through the season, as well as their dream to become elite athletes and represent their countries around the world but also the different scholarships these sport members are expecting to get in universities that require sports excellence.⁶⁹

2.3.2 Normalization of abuse in the coach-athlete relationship as part of the culture of win-at-all costs

In any sports and particularly in high-performance sports, the relationship between a coach and athlete is extremely important as it influences the performance of the athlete in sports settings, as well as it often extends beyond training into other areas of an athlete's life including diet, academics, and social interests,⁷⁰ in addition, children that train intensively often end up spending more time with their coaches than with their parents.⁷¹ Consequently, and while research has demonstrate the potential impact of the coach on the nature and quality of the athlete's sport journey and their development in general, there is also literature that reveals problems of abuse.⁷²

It is unfortunate how certain negative and learned conducts which have been discussed above are passed onto generations from coach to athletes enhancing a culture of maltreatment in high-performance sports, besides considering that a high

⁶⁷ University of Kent, 'Parental pressure pushes young athletes to doping' (UoK News Centre, 25 February 2016) <https://www.kent.ac.uk/news/science/8870/parental-pressure-pushes-young-athletes-to-doping> accessed 14 July 2022.

⁶⁸ Myrna El Fakhry Tuttle, 'Does Elite Sport Respect Young Athletes' Human Rights?' (LawNow, 6 July 2021) <https://www.lawnow.org/does-elite-sport-respect-young-athletes-human-rights/> accessed 20 July 2022.

⁶⁹ UNESCO, United Nations Educational, Scientific and Cultural Organization 'Sports winning at any cost?' [2006] The UNESCO Courier ISSN 1993-8616 accessed 14 July 2022.

⁷⁰ Alan Tomlinson & Ilkay Yorganci, 'Male coach/female athlete relations: Gender and power relations in competitive sport' [1997] Journal of sport and social issues <https://doi.org/10.1177/019372397021002003> accessed 15 July 2022.

⁷¹ Paulo David, 'Children's Rights and Sports' (1999) 7 Int'l J Child Rts 53.

⁷² Geneviève A. Mageau and Robert J. Vallerand, 'The coach-athlete relationship: a motivational model' [2003] 21(1) Journal of sport and sciences <https://doi.org/10.1080/0264041031000140374> accessed 15 July 2022.

percentage of athletes become coaches and learn conducts that makes them repeat these patterns,⁷³ hence over the years has become a normal conduct that is not seen as wrongdoing, for instance, psychological abuse is seen as a part of a day-by-day training which makes athletes and sports participants unable to recognise any type of maltreatment, and instead, what outside these settings is considered as a wrongdoing, in sports settings may be considered a tough and strict way of training.⁷⁴

Consequently, some studies reveal that the normalization of harm and complicity were part of the culture in most sports, also athletes stressed that inappropriate coach behaviour is often labelled as “passionate”, in addition to honour coaches that have brought prizes and championships titles regardless their abusive coaching style psychologically and physically towards athletes, and most importantly, parents are in constant belief that the toughest the coach, the more chances their children have to succeed in sports, turning a blind eye to unsafe trainings conditions.⁷⁵ Furthermore, this paper argues that there is a need for a sport community including athletes, coaches, clinicians, sports managers, decision-makers and parents to get a better understanding of what child maltreatment is and the forms and concrete manifestations it could take in sports settings. In addition, the lack of awareness should be taking in consideration and implement action plans that help dissolve the issue of normalization of athlete maltreatment by sport stakeholders.⁷⁶

Nonetheless, one of the problems that are embedded in the sports culture of high-performance athletes is the control that the coach has over the athletes, since this uses the experience and knowledge overpowering the direction of the training sessions focusing on its own goals as a leader of a very selective team creating an ecosystem of control and compliance, often forgetting the opinion and goals of the athletes minimizing the physical and mental needs of the latter. This being an issue that generates instability in the athlete's preparation, putting at risk the members of

⁷³ Ashley E. Stirling & Gretchen A. Kerr (2009) Abused athletes' perceptions of the coach-athlete relationship, *Sport in Society*, 12:2, 227-239, DOI: 10.1080/17430430802591019.

⁷⁴ Erin Willson, 'Listening to Athletes' Voices: National Team Athletes' Perspectives on Advancing Safe Sport in Canada' (*Frontiers in Sport and Active Living*, 30 March 2022) <https://www.frontiersin.org/articles/10.3389/fspor.2022.840221/full> accessed 23 June 2022.

⁷⁵ Ibid.

⁷⁶ Kristine Fortier & others, 'Child maltreatment in sport: smashing the wall of silence: a narrative review of physical, sexual, psychological abuses and neglect' [2019] 54(1) *British journal of sports medicine* 2020 <http://dx.doi.org/10.1136/bjsports-2018-100224> accessed 26 July 2022.

the team that are under the decision-making power of the coach.⁷⁷ It is however important to consider as an example of this is the resolution of the “Whyte review” in the United Kingdom (UK) in regard to the organisation British Gymnastics, after considering over 300 evidence recollected across the UK and in which has been recognised the different types of behaviours that have been part of the culture of the sport for decades becoming a “normalized” way of training, for instance the coach-lead training where individual’s opinions and interest are put in second place, with the excuse that the coach have the knowledge to what is best for the gymnast, likewise the culture of fear, which was created by the power imbalance in the relationship between coaches and athletes, likewise the fact that a big percentage of coaches are former gymnasts and there is a high risk that any learned negative behaviour and training will be passed on to generations of coaches.⁷⁸

In addition, a Gymnastics Australia hall of fame coach was the subject of several complaints by a former Australian gymnast, who alleged suffered verbal, physical, and emotional abuse.⁷⁹ Where one of the first accusations stated that the athletes would be locked in a room and feed them “peas and carrots under the door” by the coach to which the National Sports Tribunal determined that the Coach has breached Version 3 of Member Protection Policy of Gymnastics Australia. In addition, the affected athletes alleged that the way the coach use her power to silence any comments against her coaching is related to the overpower of control over the team selection to attend to high performance competitions such as World Championships and Olympic games made gymnasts silenced throughout their career for fear of jeopardising their places in the team.⁸⁰

Furthermore, is part of the norm that a fair amount of power is invested in a sports coach, as their extended experience often makes them impose their vision of training

⁷⁷ Ashley E. Stirling & Gretchen A. Kerr. “Initiating and sustaining emotional abuse in the coach-athlete relationship: An ecological transactional model of vulnerability. *Journal of Aggression, Maltreatment & Trauma*, 23(2), 116-125. DOI:10.1080/10926771.2014.872747.

⁷⁸ Tom Parmenter, 'British Gymnastics: Whyte Review reveals abusive culture as young people 'starved, body shamed and punished' (SkyNews, 16 June 2022) https://news.sky.com/story/british-gymnastics-whyte-review-reveals-abusive-culture-as-young-people-starved-body-shamed-and-punished-12635062?utm_source=upday&utm_medium=referral accessed 17 June 2022.

⁷⁹ Paul Kennedy, 'Leading gymnastics coach Peggy Liddick sanctioned for harassment of Olympic athlete' (ABC News, 2 February 2022) <https://www.abc.net.au/news/2022-02-04/gymnastics-coach-peggy-liddick-harassment/100802592> accessed 25 May 2022.

⁸⁰ National Sports Tribunal, *Liddick v Gymnastics Australia and Sport Integrity Australia*, Case No NST-E21-148532, Australian Government, (19 January 2022), para 57.

on athletes, creating an environment where the athletes' opinion is worthless and overlooked by the coach and the sport stakeholder behind a team, if we talk about a coach that has made the team win in several occasions and has also brought fame to the country, this coach will be protected against any accusation.⁸¹ Besides, the coaches themselves, create an environment where athletes are physiologically abused, manipulated, and blackmailed to cover their desire to speak up when experiencing any type of mistreatment, creating an issue of freedom of expression which is highly recognised as a human right by the UNDHR in its article 10, establishing that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."⁸², likewise, by article 19(2) of the ICCPR which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."⁸³ As well as, by article 12 of the UNCRC which call States Parties to the convention to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".⁸⁴

Furthermore, situations where coaches lose their perspective and transform the training in a toxic environment are rather often, for instance, in 1993, reports found that Florin Gheorghe, (Romanian national team coach), "grabbed Adriana Giurca by the neck and pounded her head against the beam, following a mistake on the balance beam, ending up in Giurca's death and the coaches arrest for manslaughter", putting the rest of the athletes in a really uncomfortable position until one of the team members decided to speak up about Adriana's death and all the continuous abuse the athletes were experiencing throughout the trainings by their coach and how they hid bruises and injuries to ensure a spot in the team and competitions. Nevertheless, once Giurca's coach was arrested, the Romanian sports

⁸¹ Ashley E. Stirling & Gretchen A. Kerr (2009) Abused athletes' perceptions of the coach-athlete relationship, *Sport in Society*, 12:2, 227-239, DOI: 10.1080/17430430802591019.

⁸² UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), article 10.

⁸³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, article 19(2).

⁸⁴ UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74, article 12.

officials rejected accusations that beating was used in training to turn Romanian gymnasts into top performers,⁸⁵ ignoring the court statement of Adriana's teammates, when they confessed that corporal punishment was "normal" in their school whenever they failed to perform to the coaches' specific standard in addition to "We accepted the beatings and the pain because we were convinced that this would open the door to top performance for us."⁸⁶ Scenario that lead to a Culture of fear and silence where athletes agreed it has a highly impact in their well-being, as is very common to be reluctant to speak up for fear of repercussions, for instance, putting their career at risk, being retired from the team, losing funding, experience bullying and harassment, and being blackmailed, which puts young athletes in a position where they are forced to remain silence and ignore any issues or maltreatment.⁸⁷

⁸⁵ The herald, 'Coach jailed for beating young gymnast to death' (The Herald, 1 February 1995) <https://www.heraldscotland.com/news/12666231.coach-jailed-for-beating-young-gymnast-to-death/> accessed 15 June 2022.

⁸⁶ Maryann Hudson, 'When Discipline Became Murder : Romanian Gymnast Adriana Giurca Was 11 When Her Coach Killed Her in a Relentless Pursuit of Perfection' (Los Angeles Times, 22 March 1995) <https://www.latimes.com/archives/la-xpm-1995-03-22-sp-45677-story.html#:~:text=eNewspaper-When%20Discipline%20Became%20Murder%20%3A%20Romanian%20Gymnast%20Adriana%20Giurca%20Was%2011,a%20Relentless%20Pursuit%20of%20Perfection&text=She%20was%20on%20the%20balance,Then%20he%20kicked%20her.> accessed 15 June 2022.

⁸⁷ Erin Willson, 'Listening to Athletes' Voices: National Team Athletes' Perspectives on Advancing Safe Sport in Canada' (Frontiers in Sport and Active Living , 30 March 2022) <https://www.frontiersin.org/articles/10.3389/fspor.2022.840221/full> accessed 28 June 2022.

Section 3: Existing policies and reforms that address human rights issues in high-performance sports settings

It is not to be ignored, the fight against violations of human rights that has been taken globally for decades, however, this section will discuss the current work that sports institutions have made to provide safeguarding to elite athletes, likewise, it will be analyse the existing policies and reforms that regional and international organisations have put in place in order to work towards the protection of human rights in high-performance sports.

Moreover, the great participation in high-performance sports that European countries have. In addition, this continent counts with a number of rules setting, starting with the European Sports Charter of 1992 which was revised in 2021 aiming to provide guidance for the Council of Europe's members States to perfect existing legislations or other policies and to develop a comprehensive framework for sport, furthermore, article 6 establishes that all stakeholders shall respect and protect internationally recognised human rights including fundamental freedoms, likewise, these should observe the general framework established for their implementation in business and other activities, moreover, section "a" to "g" to this article seek to ensure that the human rights of the athletes are respected, in the way of "fighting arbitrariness and other abuses in sports in order to ensure full respect for the rule of law in sports activities, this including the access to remedies, justice and a fair trial in line with the applicable human rights standards", likewise "work towards the inclusion of a clear commitment to human rights in the respective policy and/or regulatory frameworks".⁸⁸

In addition, the Council of Europe Code of Sports Ethics call the States to follow a set of responsibilities regarding a *fair play* conceptualisation which for the Council of Europe means "It incorporates issues concerned with the elimination of cheating, gamesmanship, doping, violence (both physical and verbal), the sexual harassment

⁸⁸ Council of Europe "Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter" (Adopted by the Committee of Ministers on 13 October 2021 at the 1414th meeting of the Ministers' Deputies) <https://rm.coe.int/recommendation-cm-rec-2021-5-on-the-revision-of-the-european-sport-cha/1680a43914>.

and abuse of children, young people and women, exploitation, unequal opportunities, excessive commercialisation and corruption”, starting with “encouraging the adoption of high ethical standards in all aspects of society within which sport operates”, followed by “encouraging research both nationally and internationally which improves our understanding of the complex issues surrounding young people's involvement in sport and which identifies the extent of poor behaviour and the opportunities for promoting fair play”.⁸⁹ Additionally, article 7.1 of the International Charter of Physical Education and Sport, refers to the importance of all sports authorities to be aware of the risks to athletes, specifically to children that can be exposed to inappropriate training and psychological pressures of every kind.⁹⁰

Consequently, the UNICEF's International Safeguards for children in sport initiative, promotes the responsibility that rest within organisations and professionals whose work has an impact or brings them into contact with children in order to promote their welfare and protect them from harm, in addition, safeguarding, seeks to find commitment from organisations to consider how their programmes, funding and operations may impact in the vulnerability of the child athlete to be expose to abuse and exploitation.⁹¹

According to Maud de Boer-Buquicchio's statement (Former United Nations Special Rapporteur on the sale and sexual exploitation of children), the best interests of the child are crucial in guiding any sports programme, in addition the latter calls on States to “ensure independent reporting and oversight mechanisms in order that complaints can be filed without fear of reprisal.” Likewise, Ms de Boer-Buquicchio also considers the importance of ratifying and putting in place international laws that protect children, and to have clear and sweeping national laws that also provide the necessary protection.⁹²

⁸⁹ Council of Europe Recommendation No (92) 14 Rev. “Code of Ethics, Fair Play – The Winning Way” (adopted by the Committee of Ministers on 24 September 1992) <https://rm.coe.int/16804cf400>.

⁹⁰ UNESCO “International Charter of physical education and Sport” (Adopted by the General Conference as its 20th session, Paris, 21 November 1978) https://en.unesco.org/sites/default/files/sport_e.pdf.

⁹¹ International safeguarding children in sport, 'International Safeguards for Children in Sport: a Guide for organisations who work with children' [2016] International Safeguarding Children in sport: Working group <https://www.end-violence.org/sites/default/files/paragraphs/download/Implementation-Guide-for-organisations-who-work-with-children-A5-version-re.pdf> accessed 22 July 2022.

⁹² United nations human rights office of the high commissioner, 'When sport becomes a dangerous playing field for children' (United Nations Human Rights, Office of the High Commissioner, 22 November 2019) <https://www.ohchr.org/en/stories/2019/11/when-sport-becomes-dangerous-playing-field-children> accessed 22 July 2022.

Nevertheless, given that the violation of human rights is a global issue, the work of different organisations around the world cannot be overlooked, for instance, the Centre for Sport & Human Rights in the United Kingdom, have set out an strategic plan to execute over the period 2021-2025, which mission is to “generate awareness, through strengthening accountability through by enabling prevention of human rights violations in sports settings”, in addition to “ensuring remedy that is effective, accessible and available for those who experience human rights abuses”, and lastly, “harnessing opportunities to promote human rights in sport that contribute to positive impacts and benefits for all”,⁹³ as well as, the Report on the Independent review into gymnastics in Australia in 2021, which examined the culture and practice at all levels of the sport of gymnastics, and provided insights of the culture of the sport which included systematic risk factors for child abuse and neglect, misconduct, abuse, and sexual harassment towards athletes, consequently, the report identified a “win-at-all-cost” culture that is found across the sport and helps develop the aforementioned risks that attempt against the safety and wellbeing of young athletes. In addition, it provided a series of recommendations in pro of an effective cultural change for every athlete in sports settings.⁹⁴

For the aforementioned reasons, considering Maud de Boer-Buquiccios’s statement and the aforementioned report is necessary to highlight the importance of these reports, including UNICEF’s work, especially human rights based and the close work with other sport organisations, as these often involve extensive research and directly considers the athlete needs and experiences, therefore, and according to State practice in recent years, it has been an increased placement of normative statements in non-binding political instruments such as, resolutions, programs of actions, and declarations, which scholars argue that the latter are known as “soft law” instruments in addition to debate whether the practice of adopting them constitutes evidence of

⁹³ Centre for sport & human rights, 'Convergence 2025' (Centre for Sport and Human rights, 30 September 2021) <https://www.sporhumanrights.org/library/convergence-2025/#:~:text=Our%20strategic%20priorities%20for%202021,Align%20with%20Human%20Rights%20Responsibilities> accessed 23 August 2022.

⁹⁴ Australian Human Rights Commission, “Change the Routine: Report on the Independent review into gymnastics in Australia”, (3 May 2021) ISBN: 978-1-925917-35-2.

new modes of international law-making, therefore, such instruments may contribute in a great manner to the formulation of treaty or custom.⁹⁵

3.1 High-performance sports institutions and their impact in the development of the human rights discourse

Consequently, as it has been discussed in section two, that children are at great risk when they are part of a competitive sport's team, as they are vulnerable and expose to different types of abuse and economic exploitation that constitute violations of human rights. For instance, the Olympic games are considered the world's foremost competition with over 200 nations participating, featuring multiple sporting events between high-performance athletes.⁹⁶

Furthermore, the International Olympic committee, recognises and upholds human rights in the Olympic Charter, specifically in the fundamental Principles of Olympism,⁹⁷ and the International Olympic Committee (IOC) code of ethics. In addition, the latter also has divided its human rights approach in three spheres of responsibility, first, strengthening their human rights approach across the organisation,⁹⁸ secondly, upholding human rights across the lifecycle of the Olympic Games, focusing from the election of the host to the contractual obligations which includes a policy commitment towards human rights, and the development of a wide human rights strategy that covers all its operations.⁹⁹ In addition, there has been an inclusion of a dedicated requirement for the Organising Committees for the Olympic Games (OCOGs) which asks the host to *“protect and respect human rights and ensure any violation of human rights is remedied in a manner consistent with international agreements, laws and regulations applicable in the Host Country and in a manner consistent with all internationally recognised human rights standards and principles, including the United Nations Guiding Principles on Business and Human Rights (UNGPs), applicable in the Host Country”*. Finally, the third goal relates to the work of the IOC

⁹⁵ Kal Raustiala, 'Form and Substance in International Agreements ' [2005] 99(3) The American Journal of International Law <https://doi.org/10.2307/1602292> accessed 23 August 2022.

⁹⁶ Dictionary.com, 'Olympic Games definition' (Dictionary.com) <https://www.dictionary.com/browse/olympic-games> accessed 15 July 2022.

⁹⁷ International Olympic Committee. (1982). Olympic charter, 1983. Lausanne: Comite International Olympique.

⁹⁸ IOC, 'The IOC as an organisation' (International Olympic Committee) <https://olympics.com/ioc/human-rights/the-ioc-as-an-organisation> accessed 15 July 2022.

⁹⁹ IOC, 'The IOC as the owner of the Olympic Games' (International Olympic Committee) <https://olympics.com/ioc/human-rights/the-ioc-as-the-owner-of-the-olympic-games> accessed 15 July 2022.

with the National Olympic Committees across the globe including international federations involving, accordingly, this committee provides States with a range of programmes and initiatives related to human rights matters, such as “safe sport” which covers all related to protection of athletes from all forms of harassment and abuse in sports and “athlete inclusion and non-discrimination which seeks to foster the inclusion of all athletes in sports.¹⁰⁰

Nevertheless, despite its intent to develop different programs to fight against violation of human rights, the Olympic charter does not specify a minimum age for athletes to participate in these events.¹⁰¹ Which puts children at greater risk when representing a Nation and have been put under an excessive amount of pressure to win which is often overwhelming for the child.¹⁰² In addition, and besides all the efforts that the IOC has put to create different toolkits for States participants of the Olympic games to protect athletes and stakeholders against human right violations, it does not provide the necessity for a State to sign and ratify human rights treaties and conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UNCAT, the UDHR and the UNCRC, thus, it only implies that States have to act accordingly in relation to these international instruments, and on the contrary, it should require that States ratify the instruments aforementioned in order to accept participation in this great event.

Additionally, as previously discussed in section 1, child trafficking is rather usual in terms of sports settings, mainly football, to which sports bodies had pointed out due to the rapid commercialization of the beforementioned sport, growing into a lucrative financial market rather than recreational setting for children and young athletes, where high level of performance is required to join a football club or team and therefore it entails a great risk for children to be exposed to child labour, forced migration and other exploitative practices.¹⁰³ In this situation, In many sporting

¹⁰⁰ IOC, 'The IOC as the leader of the Olympic Movement' (International Olympic Committee) <https://olympics.com/ioc/human-rights/the-ioc-as-the-leader-of-the-olympic-movement> accessed 15 July 2022.

¹⁰¹ International Olympic Committee, 'Olympic Charter' (IOC, 8 August 2021) Rule 42 “There may be no age limit for competitors in the Olympic Games other than as prescribed in the competition rules of an IF as approved by the IOC Executive Board”.

¹⁰² Paulo David, 'Children's Rights and Sports' (1999) 7 Int'l J Child Rts 53.

¹⁰³ Mike Rigg, 'Minors in Football and Recruitment Strategies' (SRI, 30 January) <https://www.sriexecutive.com/2018/01/30/minors-in-football-and-recruitment-strategies/> accessed 31 July 2022.

activities, mainly in high-performance sports, aspiring athletes are being scouted by actors and bodies around the globe, offering the opportunity to develop their abilities and in the hopes to join national and international elite teams. Nevertheless, despite the fact that lawfully, young athletes are often accompanied by their parents or enjoy their parent's consent to take part in try-outs for elite sporting activities, the other side of the coin also shows 15.000 of yearly children trafficked into Europe with the hope to enter a professional team.¹⁰⁴

Furthermore, like many sports, the recruitment to professional football teams surrounds minors, and national rules increase possibility for this to happen as for instance in the United Kingdom (UK), the premier league rules state that for players under 16 years old, an academy may offer a professional contract to start at the age of 17. Nevertheless, a club "may not induce a player to sign a binding contract by offering him any benefit or payment in kind or offer the player any sums above the scholarship agreement".¹⁰⁵ And despite the aforementioned rule, in 2019, Everton Football Club, was found to have provided false information to the UK Premier League in relation to the transfer of minor players, as it has been determined that players and their families received inducements by the Everton academy staff in order for the family to accept the player's registration with the club.¹⁰⁶

An equal significant aspect of this topic is found, in international recruitment, where for instance, the Federation International de Football Association (FIFA), despite being a Swiss association, incorporated and regulated under the Swiss Civil code, in practice this association acts as a global regulator with the power to bend States to its will and to execute regulatory authority worldwide.¹⁰⁷

Accordingly, FIFA counts with measures that aim to protect the rights of minors in football, as it states in article 3 of the FIFA Statutes that "FIFA is committed to

¹⁰⁴ Ini-Obong Nkang, 'Europe's search for soccer's next big star is driving a modern-day slave trade' (Quartz Africa, 21 July 2022) <https://qz.com/africa/1687177/european-football-drives-modern-slave-trade-of-young-africans/> accessed 23 August 2022.

¹⁰⁵ The football association premier league limited. Premier League. "Youth Development Rules, Season 2020/21" <https://resources.premierleague.com/premierleague/document/2020/09/23/9af878e5-d485-4683-87d9-4e4c3834d3bf/PL-2020-21-YD-Rules.pdf>.

¹⁰⁶ The football association premier league limited. Premier League. "Youth Development Rules, Season 2020/21" <https://resources.premierleague.com/premierleague/document/2020/09/23/9af878e5-d485-4683-87d9-4e4c3834d3bf/PL-2020-21-YD-Rules.pdf>.

¹⁰⁷ Erik Henk Meier & Borja García, 'Protecting Private Transnational Authority against Public Intervention: FIFA's Power over National Governments' [2015] 93 Public Administration 890.

respecting all internationally recognised human rights and shall strive to promote the protection of these rights”, resembling and including the rights that have been specifically formulated to recognise the special status of young people.¹⁰⁸ Additionally, FIFA counts with a set of rules in regards to child transfer, which are contained in the Regulations on the Status and Transfer of Players (RSTP), and recently, in 2020 a guide to submitting a minor application in light of protecting minors and state that international transfers are only permitted for players over the age of 18, nonetheless, the guide counts with certain qualifying criteria that the player must meet, among which are; the under 18 player would move to a club in a different country in their parents or guardians move there for non-footballing reasons, likewise, if the player is from another nation within the European Union or European Economic Area and aged between 16 to 18 and lastly, if the player lives within 100km of the club in question, and remain under the care of their family.¹⁰⁹

Accordingly, is necessary to highlight that FIFA’s framework is designed to sanction clubs when a breach of its provisions is committed, however, it lacks the institutionalisation of a system that allows children to seek reparation when their rights have been violated.¹¹⁰ Therefore, conditions for young players need to improve in ways that are equivalent with the UNCRC to ensure a child approach is taken when considering improvements of training infrastructures, welfare standards, educational opportunities in addition to protecting the player’s transfer.¹¹¹

As discussed in section two, FIFA has a great impact in terms of Human rights, and it has also been determined the lack of institutionalisation in this matter, nevertheless, when human rights are concerned, this paper seeks to imprint the link between the State responsibility when it comes to violation of human rights, in addition to the prevention of the latter, therefore is imperative to highlight that a more indirect way to

¹⁰⁸ Eleanor Drywood, 'We need to talk about the Kids: FIFA's children's rights obligations' FIFA and Human Rights (4 July 2019), <https://verfassungsblog.de/we-need-to-talk-about-the-kids-fifas-childrens-rights-obligations/> accessed 1 August 2022.

¹⁰⁹ FIFA, 'Protection of Minors: guide to submitting a minor application' (FIFA, September 2020 Edition) <https://digitalhub.fifa.com/m/2130eb84c31cf4e4/original/lb2t6bqgmi2a1x1pr5xs-pdf.pdf> accessed 31 July 2022.

¹¹⁰ Vanessa Cezarita Cordeiro, 'Recruitment of minors in football: the regulation of young players' (Humanium, 7 June 2022) <https://www.humanium.org/en/recruitment-of-minors-in-football-the-regulation-of-young-players/> accessed 31 July 2022.

¹¹¹ Serhat Yilmaz & James Esson, 'Children’s rights and the regulations on the transfer of young players in football' [2020] 55(1) International Review for the Sociology of Sport DOI: 10.1177/1012690218786665 accessed 2 August 2022.

approach FIFA's accountability is through State responsibility, as it is known that FIFA has committed to respect the ICESCR, but cannot be held accountable in a direct way in case of a breach of this commitment as the ICESCR does not apply to private associations, the solution would then be to hold the State responsible for failing to protect individuals from these abuses by third parties such as FIFA as a private association.¹¹²

¹¹² Antoine Duval & Daniela Heerdt, 'FIFA and Human Rights - a research agenda' [2020] 25(1) *Tilburg Law review Journal of International and European Law* DOI: <https://doi.org/10.5334/tlr.18> accessed 7 August 2022.

Section 4: State responsibility

In this section, this paper will discuss and address the importance of the State responsibility regarding Human rights, noting the different case law, conventions, treaties and international law that attributes the States the responsibility to protect, defend, fulfil and respond against human rights violations, in addition, it will be discussed the bindingness of international conventions and the due diligence rule, that gives States the obligation under international law to as beforementioned, protect, respond and fulfil human rights, furthermore, this paper will discuss the UN Guiding Principles on Business and Human Rights, considering the importance of it as a soft law instrument when talking about the State's responsibility to protect against human rights abuse occasioned within its territory and jurisdiction by third parties, including business enterprises.

Accordingly, State responsibility is known to be a general principle of international law, thus, the latter has long carried within the principle that every legal wrong must attach legal responsibility.¹¹³ For instance, in the *Spanish Zone of Morocco Claims* (Spain v United Kingdom), Judge Huber stated that "Responsibility is the necessary corollary of a right. All rights of an international character involve international responsibility. If the obligation in question is not met, responsibility entails the duty to make reparation."¹¹⁴ Additionally, in *Chorzów Factory (indemnity)*, the Permanent Court of International Justice (PCIJ) made the observation that "any breach of an engagement involves an obligation to make reparation" given that reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be state in the convention itself."¹¹⁵

Furthermore, international law provides a division between primary rules and secondary rules, the first one refers to the definition of the content of international obligations, breach of which gives rise to State responsibility, also known as the *substantive rules* of international law, moreover, the secondary rules contain the

¹¹³ Danwood Mzikenge Chirwa, *State Responsibility for Human Rights*. in Routledge (ed), *International Human Rights Law* (2010) 9781315589404.

¹¹⁴ *Great Britain v Spain* (1924) 2 R.I.A.A 615 *Spanish Zone of Morocco Claims*.

¹¹⁵ Permanent Court of International Justice (PCIJ) *Chorzow Factory indemnity case*, Judgment of 26 July 1927.

general conditions under international law for the State to be considered responsible for wrongful actions or omissions and any legal consequences that may follow.¹¹⁶

Subsequently, the secondary rules on State responsibility were codified by the International Law Commission (ILC) known as the draft articles on Responsibility of States for Internationally wrongful acts (ARSIWA),¹¹⁷ moreover, the scheme of the ILC Draft articles sets out in article 1 the principle of State responsibility as “Every international wrongful act of a State entails the international responsibility of that State”,¹¹⁸ additionally, according to the elements of an internationally wrongful act of a State, article 2 ARSIWA, addresses these as (a) is attributable to the State under international law and (b) constitutes a breach of an international obligation of the State, highlighting that an internationally wrongful act of a State may consist of one or more actions or omissions or a combination of both”.¹¹⁹

Noting the above, article 3 of the ILC Draft articles provides that State responsibility is incurred when two elements are proved, the first one provides that there must be a conduct consisting of an act or omission that is attributable to the State under International Law and secondly, the conduct must constitute a breach of an international obligation of the State,¹²⁰ considering that the commentary defines conduct to include omissions where a duty to act is derived from international obligation.¹²¹ Additionally in terms of establishing State responsibility, is important to note that the ARSIWA emphasise the State action and scholars argue that by doing so, the State’s responsibility coming from a base of *omissions* are often overlooked.¹²²

¹¹⁶ Borzu Sabahi, *Compensation and Restitution in Investor-State Arbitration* (Oxford University Press 2011) 7-42.

¹¹⁷ Carmen Pérez González, 'The effective application of international human rights law standards to the sporting domain: Should UN monitoring bodies take central stage?' [2022] Vol.22 *The International Sports Law Journal* <https://doi.org/10.1007/s40318-021-00209-8> accessed 24 May 2022.

¹¹⁸ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (ARSIWA), November 2001, Supplement No. 10 (A/56/10), Article 1.

¹¹⁹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (ARSIWA), November 2001, Supplement No. 10 (A/56/10), Article 2.

¹²⁰ Danwood Mzikenge Chirwa, *State Responsibility for Human Rights*. in Routledge (ed), *International Human Rights Law* (2010) 9781315589404.

¹²¹ Gordon A. Christenson, 'Attributing Acts of Omission to the State' [1990] 12(2) *Michigan Journal of International Law* <https://repository.law.umich.edu/mjil/vol12/iss2/2> accessed 12 August 2022.

¹²² Danwood Mzikenge Chirwa, *State Responsibility for Human Rights*. in Routledge (ed), *International Human Rights Law* (2010) 9781315589404.

It is however important to add that the State's duty to protect includes two obligations that enjoy a different nature, for instance, the obligation to try to prevent harmful acts of individuals and the obligation to punish those responsible when a harmful act has occurred. Nevertheless, the due diligence rule also extends to the State responsibility with respect to acts of private individuals, thus scholars argue that the acts of individuals are not attributable to the State, in the contrary, it has also been argued that those acts may represent only the external fact that gives opportunities to a different wrongful act to be committed, which consists in the State organs' failure to 'prevent or punish' such acts, therefore, the State is responsible only if its own organs, including State agents, have breached the duty to protect.¹²³

Nonetheless, given that an omission in law occurs when the actor in question is under a legal obligation to act and fails to do so, additionally, the law sees omissions in certain circumstances as a potential source of responsibility, for these reasons, It is important to contemplate wrongful acts of a State by omission as it should be consider the emerging State practice in regard to determining a governments responsibility when it fails to prevent massive pollution of the environment or fails to contain terrorist violence in the same way that fails to prevent massive abuse of human rights in State territory. Moreover, the Responsibility of the State engages when such conduct causes harm in breach of international obligations.¹²⁴

4.1 The due diligence framework according to the law of State responsibility in the field of Human Rights

In order to discuss in more dept the potential of the due diligence concept in this field is necessary to highlight that as previously considered in section one, Human rights have been a part of the society for decades and are known as raging from the right to life, rights to education, health, and liberty. They imply individual entitlements between the duty-bearers (state) and the rights-holders (individuals), in addition, human rights aim at offering the possibility to any human being to claim his or her

¹²³ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' (1992) 35 German YB Int'l L 9.

¹²⁴ Gordon A. Christenson, 'Attributing Acts of Omission to the State' [1990] 12(2) Michigan Journal of International Law <https://repository.law.umich.edu/mjil/vol12/iss2/2> accessed 5 August 2022.

rights, and when a violation of these occurs, to have access to a fair and impartial redress procedure.¹²⁵

Moreover, the development of international human rights law has significantly affected the historical order of international law, particularly in some legal concepts such as erga omnes obligations, Jus cogens norms, the responsibility to protect and the laws on State responsibility. Besides, as previously discussed, the law on State responsibility is known to regulate the legal consequences of an internationally wrongful act. Nevertheless, in terms of human rights law, this has been qualified as “a field of functional specialization” to which the rules of State responsibility could not be applied since only distinct regimes are capable of addressing its peculiarities.¹²⁶

Nonetheless, while human rights violations may theoretically activate civil wars or refugee crisis and often develop cross-border problematic situations, it is important to stress that human rights protection primarily concerns the relationship between a State and its citizens, moreover, it is necessary to differentiate and address that the State enjoys positive and negative obligations where portraying State responsibility for human rights violations, for instance, positive obligations consist in obligations that instruct States to actively perform, on the contrary, negative obligations require States to refrain from doing something.¹²⁷ Notwithstanding, these positive obligations attributed to the State were brought firstly by Henry Shue who argued that every basic right entails three duties of States, known as ‘to avoid depriving’, ‘to protect from deprivation’, and ‘to aid the deprived’,¹²⁸ however what is now-a-days known as the duty ‘to respect’, ‘to protect’, and ‘to fulfil’ was a definition argued by Asbjorn Eide in 1987, who helped shape this very well-known typology, often used in international and regional human rights monitoring bodies.¹²⁹

¹²⁵ Paulo David, *Human Rights in Youth Sport* (Routledge 2005) p22.

¹²⁶ Christian Tomuschat, 'Human Rights: between idealism and realism' [2014] 3rd edition, Oxford University Press DOI: 10.1093/law/9780199683734.001.0001 accessed 15 August 2022.

¹²⁷ Maria Monnheimer, *Establishing State Responsibility for Human Rights Violations: Proposal for a Conduct-Based Typology of Human Rights Obligations. Due Diligence obligations in International Human Rights Law* (Cambridge University Press 2021) 47-77 Doi:101017/9781108894784003.

¹²⁸ Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy: 40th Anniversary Edition* (Princeton University Press 1980) p.52.

¹²⁹ Danwood Mzikenge Chirwa, *State Responsibility for Human Rights*. in Routledge (ed), *International Human Rights Law* (2010) 9781315589404.

Consequently, when it comes to the human rights sphere, human rights treaties often instruct States to *ensure* the protected rights meaning that States are obligated to take active measures in order to prevent external violations, likewise, to refrain from actively violating human rights, including to ensure that private conduct does not interfere with human rights any private conduct that goes against human rights, must be sanctioned adequately.¹³⁰

Furthermore, when it comes to State responsibility in human rights, specifically in high-performance sports settings, we can observe that there are international law instruments that refer and call for the State's responsibility to ensure the protection of human rights, for instance, the UNCRC provides in its core articles the responsibility of States parties to respect and ensure the rights set forth in the convention to each child without any type of discrimination (article 2),¹³¹ in addition, States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights that are recognized within the convention (article 4),¹³² as well as, assure to the child the right to express their views freely in all matters affecting the child (article 12),¹³³ likewise, establishes that the States parties should protect the child against all other forms of exploitation that are prejudicial to any aspects of the child's welfare (article 36),¹³⁴ in addition, establishes that States parties shall ensure that no child shall be subject to torture or other cruel, inhuman, or degrading treatment or punishment (article 37).¹³⁵

Despite the above, it is imperative to call attention to the responsibility that States obtain to protect human rights, considering that these conventions are set to be legally binding obligations on public authorities including their agents, additionally, this gives a clear identification between the State and its agents and those that

¹³⁰ Maria Monnheimer, *Establishing State Responsibility for Human Rights Violations: Proposal for a Conduct-Based Typology of Human Rights Obligations*. *Due Diligence obligations in International Human Rights Law* (Cambridge University Press 2021) 47-77 Doi:101017/9781108894784003.

¹³¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 2.

¹³² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 4.

¹³³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 12.

¹³⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 36.

¹³⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> article 37.

indirectly care for the child as a duty-bearers and the children as a right-holders.¹³⁶ Furthermore, as stated in section 2, human rights are principally invoked in the UDHR, considering that individuals are direct beneficiaries of human rights in international law since they enjoy certain guarantees that every human is entitled to, such as the right to life, liberty and security, highlighting that treaties and conventions that refer to Human rights not only establish reciprocal rights for contracting States but also obligate all States to respect and protect the rights of individuals within their jurisdictions.

Moreover, article 2 of the International Covenant on Civil and Political Rights (ICCPR) calls States parties to “respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant” having that the word *ensure* means that States have the obligation to take positive steps to guarantee the enjoyment of human rights, highlighting that the aforementioned article suggests that this duty has two variants, primarily, refers to the duty to take preventive measures against occurrences of violations of human rights that have been caused by private actors, and secondly, the duty to take remedial measures once the violations have occurred.¹³⁷

For example, The Inter-American Court of Human Rights (IACtHR) states that “The Court must emphasize, however, that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose are the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction.”¹³⁸ Which promotes the importance for States to respond against human rights violations individually.

¹³⁶ Paulo David, *Human Rights in Youth Sport* (Routledge 2005) p22.

¹³⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Article 2(2) and 2(3).

¹³⁸ Laurence Burgorgue-larsen and Amaya Ubeda de Torres, *The Inter-American Court of Human Rights* (OUP Oxford 2011) 58.

Consequently, in the *Velásquez Rodríguez v Honduras* case, the IACtHR found that human rights violations that are not initially directly imputable to a State, “can lead to the international responsibility of the State, not because of the act itself, but because of the *lack of due diligence to prevent the violation or to respond to it*”,¹³⁹ considering that due diligence requires the State to not only take reactive measures once the violations of human rights have taken place but also to take reasonable steps to prevent the violation of the latter.¹⁴⁰

Additionally, the *López Ostra* case reflects the State responsibility in a similar way as by the ECtHR, where a privately operated waste-treatment plant caused nuisance and health problems in the surrounding areas and although the respective authorities from Spain were not directly responsible for the emissions in question, the court held that “the town allowed the plant to be built on its land and the State subsidized the plant’s construction”, which triggered an obligation to evaluate human rights risks that emanate from the plant’s operation.¹⁴¹

Consequently, the court also addressed in the *Oneryildiz v Turkey* case, that “wherever dangerous activities presuppose the risk of human rights infringements, States were under an obligation to govern the licensing, operation, setting up, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens,¹⁴² therefore is necessary to understand that States are expected to evaluate potential human rights risks in order to take adequate preventive measures.¹⁴³

Moreover, the international human rights law obligations that States are abide by, as mentioned before, refer purely to respect, protect, and fulfil the human rights of individuals within their territory and jurisdiction, thus, the duty to protect is considered to be a standard of conduct meaning that States are not per se responsible for

¹³⁹ *Velásquez Rodríguez Case*, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACtHR), 29 July 1988.

¹⁴⁰ Danwood Mzikenge Chirwa, *State Responsibility for Human Rights*. in Routledge (ed), *International Human Rights Law* (2010) 9781315589404.

¹⁴¹ European Court of Human Rights, ECtHRt, *López Ostra v. Spain*, Judgment of 9 December 1994, Application No. 16798/90. para. 52.

¹⁴² European Court of Human Rights, *Case of Öneryildiz v. Turkey*. Application no 48939/99, judgment Strasbourg 30 November 2004.

¹⁴³ Maria Monnheimer, “Applying the Due Diligence Framework to the Field of Human Rights Protection” *Due Diligence obligations in International Human Rights Law* (Cambridge University Press 2021) 204 - 257 Doi:10.1017/9781108894784.007.

human rights abuse by private actors, nevertheless States may break their international human rights law obligations where such abuse can be attributed to them, through their due diligence and the positive obligations attributed to them when they fail to take appropriate measures and steps to prevent, investigate, punish and redress abuses committed by private actors,¹⁴⁴ therefore, States must use different tools in order to ensure compliance with their preventive and protective human rights due diligence obligations also when talking about harmful conduct of private individuals.¹⁴⁵

4.2 Bindingness and State's compliance of human rights instruments

For decades, monitoring State's compliance with international human rights obligations has been a complex task, as when it comes to provide reports of the latter from States to international organizations, the issue often formulates when States are the prime violators of human rights, secondly, scholars argue that human rights violations do not usually have an impact on other States, therefore, when comparing with other domains, human rights faces an unstable ground to establish forceful human rights mechanism, as well as, performing pressure between States into compliance.¹⁴⁶

Moreover, the responsibility of States according to the protection of rights to Children is also found the Committee on the Rights of the Child was formed under article 43 of the UNCRC, calling the States parties to "regularly submit reports on their intrastate measures taken to enforce the provisions of the UNCRC", measures that must be nationally published according to article 44 UNCRC, where States parties are obliged to submit regular reports to the Committee on the Rights of the Child, regarding the measures they have adopted to ensure the convention is put into effect and report

¹⁴⁴ OHCHR, 'Guiding principles on business and human rights' (United Nations Human Rights, Office of the High Commissioner, 2011)

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹⁴⁵ Maria Monnheimer, "Applying the Due Diligence Framework to the Field of Human Rights Protection" Due Diligence obligations in International Human Rights Law (Cambridge University Press 2021) 204 - 257 Doi:10.1017/9781108894784.007.

¹⁴⁶ Valentina Carraro, 'Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies' [2019] 63 International Studies Quarterly, Maastricht University 1079-1093.

any progress made on the enjoyment of those rights.¹⁴⁷ Nevertheless, one of the issues in this matter relies on the lack of effectiveness in the enforcement and controlling of the measures to pressure States parties when implementing the UNCRC,¹⁴⁸ secondly, the committee has only been assigned to control State reports and make recommendations that are not binding, as well as, not having the power to receive claims or sentence state parties.¹⁴⁹ In this matter, international law protects human rights by laying down obligations which States are bound to respect, which means that States must refrain from interfering with or curtailing the enjoyment of human rights.¹⁵⁰

In addition, the UN's Universal Periodic Review (UPR), is established as an unique process which involves a review of the human rights records of all UN Member States, this is done under the umbrella of the Human Rights Council, which aims to "give the opportunity to States to declare the actions they have taken in light to improve the human rights situations within their countries and to be able to fulfil their human rights obligations".¹⁵¹

Consequently, and although this paper will not discuss in dept the mechanisms implied by the Committee on the Rights of the Child and the UN's Universal periodic review, it remains unclear the effectiveness of these mechanism with regard to improving State compliance with human rights.¹⁵²

On the other hand, according to Jean d'Aspremont, bindingness constitute the very DNA of international law as discipline, considering it as the very central binary code that allows a differentiation between international legal discourses and other argumentative and descriptive frameworks that concern the execution of public

¹⁴⁷ United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, article 44.

¹⁴⁸ Romana Weber, 'Protection of children in competitive sport: some Critical Questions for London 2021' [2009] 44(1) International Review for the Sociology of Sport 10.1177/1012690208101485 accessed 21 July 2022.

¹⁴⁹ Früh, B. (2007) Die UNO-Kinderrechtskonvention. Zurich: Dike.

¹⁵⁰ United nations, 'The Foundation of International Human Rights Law' (UN peace, dignity and equality on a healthy planet) <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law#:~:text=How%20Does%20International%20Law%20Protect,and%20to%20fulfil%20human%20rights> accessed 8 August 2022.

¹⁵¹ United Nations General Assembly, Human Rights Council, (3 April 2006), A/RES.60/251.

¹⁵² Valentina Carraro, 'Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies' [2019] 63 International Studies Quarterly, Maastricht University 1079-1093.

authority at the international level, in addition, is important to note that bindingness is an expression that represents the validity of a rule that constitute binding material which becomes able to be used in international legal argumentation, nevertheless, bindingness is not considered to be a guarantee for compliance.¹⁵³

Consequently, the institutionalist viewpoint suggests that behind the State's interest in concluding treaties of human rights, identical obligations must be carried,¹⁵⁴ therefore, any State party is found obliged as against any other State party to execute its obligation and that, on the other hand, any party enjoys a correlative right to integral performance by all the other contracting States.¹⁵⁵ Conversely, scholars argue that State's actions against its own citizens do not directly harm other States, except in cases of human rights violations of foreign nationals, nevertheless, in terms of obligations *erga omnes* the fulfilment as human rights obligations is owed to the international community as a whole.¹⁵⁶

Certainly, international human rights law has developed in a way that impose positive obligations on States in relation human rights, adding that, International human rights law lays down obligations which States are bound to respect, one way for this to occur is by becoming parties to international treaties.¹⁵⁷ Moreover, according to the consent-based approach in international law, international lawyers have determined State consent as the central basis for the binding nature of international law, in this sense, the law of treaties refers to the fundamental norm of "pacta sunt servanda", which points back to the consent-based approach that suggests that States can bear no obligation to which they have not consented, therefore, International law treaties

¹⁵³ Jean d'Aspremont, Bindingness, (13 November 2015) J. d'Aspremont and S. Singh (eds), Concepts for International Law, Contribution to Disciplinary Thought, Edward Elgar, 2019, 67-82, Amsterdam Law School Research Paper No. 2015-44, Amsterdam Center for International Law No. 2015-19, <https://ssrn.com/abstract=2690155>.

¹⁵⁴ Naiade El-Khoury, 'Chapter 5 Institutionalism: Theory and the Effectiveness of International Human Rights Treaties' [2020] In Irrational Human Rights? An Examination of International Human Rights Treaties https://doi.org/10.1163/9789004439764_009 accessed 23 August 2022.

¹⁵⁵ UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13. para. 2.

¹⁵⁶ Naiade El-Khoury, 'Chapter 5 Institutionalism: Theory and the Effectiveness of International Human Rights Treaties' [2020] In Irrational Human Rights? An Examination of International Human Rights Treaties https://doi.org/10.1163/9789004439764_009 accessed 23 August 2022

¹⁵⁷ United Nations, 'The Foundation of International Human Rights Law' (United Nations peace, dignity and equality on a healthy planet) <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> accessed 26 July 2022.

are seen as a way for States to consent to abide by certain well-specified obligations.¹⁵⁸

To this end, given the substantive content of human rights obligations and the impacts that has in society, is generative for grasping the relevance of the consent-based approach in international law, furthermore, the imposition of the obligation to the State is made through the ratification of international human rights treaties, additionally, the 1969 Vienna Convention on the Law of treaties provides in article 12 that States consent to be bound by a treaty expressed by signature if only, the treaty expresses that signature shall have that effect, as well as, article 13 provides that the consent of States to be bound by a treaty expressed by ratification as long as the treaty determines for such consent to be expressed by means of ratification, consequently, article 26 establishes that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith” also known as *pacta sunt servanta*,¹⁵⁹ given that the latter is not a rule which creates legal obligations, but instead, creates a statement regarding obligations that already exist based on a binding agreement.¹⁶⁰

For all those reasons, States are called to adapt domestic measures and legislations in a way that is compatible with the treaty obligation and duties. Conversely, although ratification of human rights treaties appears to have little favourable impact on individual countries’ practice, given that the monitoring and enforcement of changes in domestic policies is rather minimal, the expression by a State of commitment to the treaties’ goals is not enough as it should be consistent with the State’s actual course of action.¹⁶¹

In this matter, the office of the United Nations High Commissioner for Human Rights has referred that States assume obligations and duties under international law

¹⁵⁸ Daniel Bodansky and Shand Watson, 'State Consent and the Sources of International Obligation' [1992] 86(1) Proceedings of the Annual meeting (American Society of International Law <http://www.jstor.org/stable/25658621> accessed 23 August 2022.

¹⁵⁹ United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, articles 12,13 and 26.

¹⁶⁰ Prof Dr Andreas Zimmermann, 'Possible indirect legal effects of non-legally binding instruments' (26 March 2021) Universitat Potsdam – CADHI Expert Workshop 'Non-Legally binding Agreements in International Law' <https://rm.coe.int/1-2-zimmermann-indirect-legal-effects-of-mous-statement/1680a23584> accessed 21 August 2022.

¹⁶¹ Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference' (2002) 111 Yale LJ 1935.

human rights by becoming parties to international treaties, such obligations are, firstly, to respect, meaning that “States must refrain from interfering with or curtailing the enjoyment of human rights”, secondly, to protect, denoting that “requires States to protect individuals and groups against human rights abuses”, and the obligation to fulfil, which purports that “States must take positive action to facilitate the enjoyment of basic human rights”,¹⁶² also noting that nations where sports organisation are known to be self-regulated and autonomous, under international treaties and conventions regarding human rights, the State remains accountable and fully obliged to ensure the respect, protection and fulfilment of human rights,¹⁶³ and although it has been argued that the ratification of human rights treaties appears to have little favourable impact on individual State’s practice, it is important to note however, that this finding does not preclude the chances that treaties bring favourable effects on human rights across the globe, as they push States to make gradual improvements to their policies.¹⁶⁴

Consequently, States commit to enacting domestic policies and laws that are consistent with their commitments and responsibilities under international human rights treaties by the ratification of those.¹⁶⁵ This is made through the duty to enact legislation that refers to the obligation to adopt adequate legislation that incorporates human rights guarantees into domestic law.¹⁶⁶ Additionally, article 2 of the ICCPR states that “States should adopt domestic laws to give effect to all rights recognized in the covenant”,¹⁶⁷ nevertheless, despite the call for States to abide by human rights conventions or instruments in general, there is no obligation to integrate human rights treaties into domestic law in a literal manner, neither to make provisions that are directly applicable before domestic courts,¹⁶⁸ however, article 14 of the IACtHR

¹⁶² OHCHR, 'International Human Rights Law' (United Nations Human Rights, Office of the High Commissioner) accessed 7 August 2022.

¹⁶³ Centre for sport & human rights, 'Child Labour in Sport Protecting the rights of child Athletes' (White Paper, 19 May 2022) accessed 7 August 2022.

¹⁶⁴ Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference' (2002) 111 Yale LJ 1935.

¹⁶⁵ OHCHR, 'International Human Rights Law' (United Nations Human Rights, Office of the High Commissioner) accessed 7 August 2022.

¹⁶⁶ Maria Monnheimer, *Establishing State Responsibility for Human Rights Violations: Proposal for a Conduct-Based Typology of Human Rights Obligations. Due Diligence obligations in International Human Rights Law* (Cambridge University Press 2021) 47-77 Doi:101017/9781108894784003.

¹⁶⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Article 2.

¹⁶⁸ Maria Monnheimer, *Establishing State Responsibility for Human Rights Violations: Proposal for a Conduct-Based Typology of Human Rights Obligations. Due Diligence obligations in International Human Rights Law* (Cambridge University Press 2021) 47-77 Doi:101017/9781108894784003.

addresses that “if the right to reply was not yet enforceable under domestic law, States parties are submitted under an obligation to adopt legislative measures to give effect to the provision”,¹⁶⁹ also established by the European Court of Human Rights which determined in the *Mahmut v Turkey* case that States are expected to take preventive measures in case they face specific human rights risks,¹⁷⁰ which means that despite that there is no intrinsic obligation to make human rights instruments directly applicable, is important however to address that there thus is an obligation to enact domestic legislation that ensures in an effective way the substance of international human rights provisions.¹⁷¹

4.3 Business in Human rights

The preamble of the International Covenant for Economic, Social and Cultural Rights recognises that “an individual, have duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present covenant”.¹⁷² Which means that not only the State party, but also private persons such as sports federations and sport agents such as national team coaches and stakeholders must protect young athletes.¹⁷³ Likewise, Mary Harvey, CEO of the Centre for Sport and Human Rights established that despite most children play sport for recreational purposes and have the right to participate in sport in a safe and enjoyable environment, this is not always the case, however, is the State’s responsibility to implement existing legal obligations and lay out the necessary measures to ensure children’s safety.¹⁷⁴

¹⁶⁹ IACtHR, Advisory Opinion of 29 August 1986 on the Enforceability of the Right to Reply or Correction, Series A, No. 7, OC-7/85, para. 35, No. 2 B.

¹⁷⁰ European Court of Human Rights, *Mahmut Kaya v Turkey*, judgment of 28 March 2000, Application No. 22535/93, paragraph 101.

¹⁷¹ Christian Tomuschat, *Human rights between idealism and realism* (3rd edition, Oxford Scholarly authorities on International Law 2014) p 174 ISBN: 9780199683734.

¹⁷² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, (16 December 1966), United Nations, Treaty Series, vol. 993, preamble.

¹⁷³ Romana Weber, 'Protection of children in competitive sport: some Critical Questions for London 2021' [2009] 44(1) *International Review for the Sociology of Sport* 10.1177/1012690208101485 accessed 22 July 2022.

¹⁷⁴ United nations human rights office of the high commissioner, 'When sport becomes a dangerous playing field for children' (United Nations Human Rights, Office of the High Commissioner, 22 November 2019) <https://www.ohchr.org/en/stories/2019/11/when-sport-becomes-dangerous-playing-field-children> accessed 20 July 2022.

According to the Human Rights Committee, the “positive obligations of States Parties to ensure covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights”.¹⁷⁵ Consequently, the latter suggests that throughout the application of positive obligations human rights instruments impact and shape the act of private entities as States are required to create binding obligations for non-state actors.¹⁷⁶

Consequently, it is important to note that elite sports are practiced from national level to international. Which involves clubs or sports associations, therefore is important to identify the relationship between business and human rights in regards the State responsibility. Furthermore, under the United Nations Guiding Principles on Business and Human Rights (UNGPR) developed by Professor John Ruggie and adopted by the Human Rights Council in June 2011, there are three general principles that recognises the State’s existing obligation to respect, protect and fulfil human rights fundamental freedoms, as well as, the role of business enterprises identified as specialized organs of society that perform specialized functions, and are required to comply with all applicable laws in respect of human rights, and lastly, the need for rights and obligations to seek appropriate and effective remedies when a breach has occurred,¹⁷⁷

It is however important to stress that the UNGPR are based on international recognised conventions like the UDHR, ILO and the UNCRC, and although the UNGPR is not considered as a legally binding document, it does not mean that needs to be removed entirely from the realm of international law, in contrary, the latter may give rise to legal implications indirectly, in a way that interacts with other instruments that are formal sources of international law, bearing in mind that there have been non-binding documents that may generate legal effects, and may be considered as precursors for the conclusion of a future treaty,¹⁷⁸ considering for

¹⁷⁵ Human rights Council, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, para. 8.

¹⁷⁶ Maria Monnheimer, *Establishing State Responsibility for Human Rights Violations: Proposal for a Conduct-Based Typology of Human Rights Obligations, Due Diligence obligations in International Human Rights Law* (Cambridge University Press 2021) 47-77 Doi:10.1017/9781108894784003.

¹⁷⁷ United Nations, “Guiding principles on business and human rights: Implementing the United Nations “Protect, respect and remedy” framework. (2011).

¹⁷⁸ Prof Dr Andreas Zimmermann, 'Possible indirect legal effects of non-legally binding instruments' (26 March 2021) Universitat Potsdam – CADHI Expert Workshop 'Non-Legally binding Agreements in International Law'

instance the 1988 Baltic Sea Ministerial Declaration,¹⁷⁹ and the 1992 Baltic Sea declaration,¹⁸⁰ which lay the foundations for the 1992 Helsinki Convention,¹⁸¹ therefore, non-legally binding instruments as the UNGPBHR may lead the way for the consideration of a later treaty and therefore formally create legal rights or obligations under international law.¹⁸²

Continuously, the UNGPBHR establishes that States have the obligation to protect against human right violations perpetrated within their territory and/or jurisdiction by third parties (including business enterprises), requiring taking the necessary steps in order to investigate, prevent and punish, through legislation, distinct regulations, appropriate adjudication, and efficacious policies. Accordingly, where a business enterprise is under the State's control or when the acts can significantly be attributed to the State, and abuse of human rights by the business enterprise may call for a violation of the State's own international law obligations.¹⁸³

Nevertheless, the commentary to the UNGPBHR suggests that “conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.”¹⁸⁴ Therefore, it is however important to note that the access to

<https://rm.coe.int/1-2-zimmermann-indirect-legal-effects-of-mous-statement/1680a23584> accessed 21 August 2022.

¹⁷⁹ Declaration on the Protection of the Marine Environment of the Baltic Sea Area, adopted on 15 February 1988 in Helsinki by the Ministers responsible for the environmental protection in the Baltic Sea States. <https://helcom.fi/wp-content/uploads/2019/08/MinDecl1988.pdf>.

¹⁸⁰ Baltic Sea Environmental Declaration, adopted on 9 April 1992 <https://helcom.fi/wp-content/uploads/2019/08/BSEnvtalDecl1992.pdf>.

¹⁸¹ Convention on the Protection of the Marine Environment of the Baltic Sea Area “Helsinki Convention”, entered into force on 17 January 2000. https://helcom.fi/wp-content/uploads/2019/06/Helsinki-Convention_July-2014.pdf.

¹⁸² Hollis Duncan B., Binding and Non-Binding Agreements: Sixth Report, 96th Regular Session, 2-6 March 2020, Rio de Janeiro, Brazil, OEA/Ser.Q, CJI/doc. 600/20, 3 February 2020, Annex II: Draft OAS Guidelines for Binding and Non-Binding Agreements (With Commentary), p. 58.

¹⁸³ OHCHR, 'Guiding principles on business and human rights' (United Nations Human Rights, Office of the High Commissioner, 2011) https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf accessed 8 August 2022.

¹⁸⁴ European Commission, “Annex to the joint communication to the European Parliament and the Council: EU Action Plan on Human Rights and Democracy 2020-2024, Join (2020) 5 Final, Brussels, 25 March 2020, pp.11-12.

remedy should be considered as an essential aspect of human rights protection, thus, the UNGPBHR's aim is not only based on preventing future harm through the State's duty to protect and the corporate responsibility to respect human rights but also through the creation and existence of preventive measures that help strengthen the access to remedy and mechanism that deal with issues when human rights abuse occurs.¹⁸⁵

For these reasons, businesses are required to understand their contribution or impact on the implementation of human rights by conducting due diligence, thus in terms of sporting leagues run as business, the UNGPBHR requires sporting leagues to conduct of human rights due diligence of all their activities and business partnerships.¹⁸⁶ In this matter, is necessary to consider the different sport actors, such as amateur associations, non-profit leagues and organizations and government-led sport organizations that also belong in way to the formation of elite athletes, and as these may correspond to a national scenario, sometimes the latter could face challenges with very limited resources and capacities that prevent them to ensure the respect for human rights, nevertheless, sport actors and sport organizations are not immune from human right responsibilities.¹⁸⁷

¹⁸⁵ European Union Agency for Fundamental Rights (FRA), "Business and Human Rights – Access to Remedy report" Publications office of the European Union (2020), doi:10.2811/54662.

¹⁸⁶ Sriram Prasad & Ashish Mishra, 'Need for human rights due diligence to curb sportswashing' (Oxford Human Rights hub, 30 September 2020) <https://ohrh.law.ox.ac.uk/need-for-human-rights-due-diligence-to-curb-sportswashing/> accessed 8 August 2022.

¹⁸⁷ Centre for sport & human rights, 'Sport, Business, and Human Rights Meeting report' (Centre for Sport and Human rights, 28 October 2019) <https://www.sporhumanrights.org/media/4nbjkeue/2019-11-clifford-chance-meeting-1.pdf> accessed 8 August 2022.

Section 5: Conclusion

The conceptualization of human rights reveals that human beings are entitled to be protect against human rights violations no matter their ethnic background, religion, and nationality. Moreover, the relationship between human rights and high-performance athletes, has not always been of an easy and common approach, and this is due to the lack of international law instruments that are specifically created to address the protection of human rights of elite athletes. Nevertheless, this paper linked the most prevalent conventions and treaties that even though are proven not to relate directly to the sports sphere, such as the Convention on the Rights of the Child, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against torture and other cruel, inhuman or degrading treatment, is however important to note that their universal ratification, helped to straighten the recognition of human rights and children's rights specifically, and more important, in sports settings including high-performance athletes.

Furthermore, it has been argued how different situations that are often part of the day-to-day of young athletes, are considered human right violations within the international law scope, considering that maltreatment as to emotional, physical, and sexual abuse, as well as negligent treatment, commercial exploitation, child trafficking and child labour are part of what the aforementioned human rights instruments address within their scopes of human rights violations, in addition to how these result in potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power, especially in sports settings, where it has been determined the importance of accounting that the life of a high-performance athlete starts from a very young age and therefore this paper found relevant to discuss these scenarios that are often performed against children, hence, affect in a great manner the development of the latter as human beings.

Consequently, the latter has also been considered to be part of what this paper addresses as a conceptualization of cultural risks that have become along the years part of the world of high-performance athletes. Nevertheless, this concept involves a culture of win-at-all-cost which reveals the situations where athletes are put through during their careers, considering doping which despite it goes against sport's ethics,

still constitutes to a frequent practice among high-performance athletes as it helps to improve their performance and therefore achieve better results, unfortunately, this is due to the high standard that sports stakeholders request and the pressure that elite athletes are being put through. Furthermore, the win-at-all cost culture also reveals that the abusive relationship between a coach and an athlete is seen as normal, as coaches also abuse of their power to control the lives of children and young adults participating in sports, to what individuals prefer to incur in a culture of silence and acceptance in order to avoid jeopardising their place in an elite sport's team.

Additionally, the global sporting industry is known to be regulated by a complex system which involves, national, regional, local, and international governmental and non-governmental entities, therefore, the work of regional organisations such as the European Sports Charter and the Council of Europe code of Sports Ethics is a great example to what sports organisations should address regarding recognising the responsibility of stakeholders to respect and protect human rights specially the situations discussed in section 2, including the application of these through business and other activities in respect to the world of high-performance athletes. Moreover, this paper has addressed the importance to consider the work of former UN special rapporteur on the sale and sexual exploitation of children, in addition to different normative statements and non-binding instruments such as, resolutions, programs of actions, and declarations, also known as soft law instruments, to be taken into account in the formation of treaties or custom.

Continuously, is important to note the great impact that international sports organisations have in terms of the development of human rights framework within high-performance sports settings, as the high percentage of participation in a global picture makes these institutions be the centre of attention when it comes to providing important changes and consideration of human rights instruments within their frameworks, in addition, it is also important to highlight that some organisations have made changes in policies that recognize system failures in sports scenarios which for a long period of time human right violations were ignored and minimised, additionally, it has been argued the need for these organisations to require the States participants to be part of the previously discussed human rights conventions that aim to safeguard the children and human well-being, and therefore ensure these rights are being fulfilled by the State.

Subsequently, this paper determined that the doctrine of State responsibility is essential to the authority and effectiveness of International Law, as without any form of legal responsibility, the obligations that have been created by International Law would not have any legal weight and therefore not gain any respect from States, considering the under the State's duty to protect, the State is obliged to prevent harmful acts of individuals and also, to punish those responsible when a harmful act has occurred, in addition to adapt the necessary measures to fulfil its human rights obligations within their territory. Moreover, it has been addressed that under the 1969 Vienna convention on the Law of treaties, that States consent to a treaty is express by means of ratification of the latter, however, in terms of compliance is necessary that the expression of commitment by a State to a treaty should be consistent with the State's actual course of action. In addition, and although States are not per se responsible for human rights abuse provoked by private actors, that does not determine that States are free of breaking international human rights obligations when such abuses can be attributed to them.

For all these reasons, when bringing human rights to the world of high-performance athletes it is necessary to establish that due to the universality of human rights, sports institutions cannot remain indifferent to human rights standards, and neither States when talking about the need to protect, respond, and fulfil the rights of high-performance athletes, despite the cultural ecosystem that may affect the line of effectiveness between human rights application in high-performance sports settings.

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