

SPORTS & ENTERTAINMENT LAW JOURNAL
ARIZONA STATE UNIVERSITY

VOLUME 7

SPRING 2018

ISSUE 2

**SOCCER STADIUMS, WHERE INTERNATIONAL LAW, CULTURE
AND RACISM COLLIDE**

FARAZ SHAHLAEI*

ABSTRACT

Racism and xenophobia have long introduced themselves as a source of conflict in societies. Soccer stadiums have been struggling with the problem of fan-based racism for a long time. Sport governing bodies, in soccer particularly, along with the Court of Arbitration for Sports are developing a body of law with distinguished principles to fight the plague of racism and hatred in stadiums. These distinguished principles will be analyzed in this article. Despite this progress, there is still a need for cooperation between governments and sport governing bodies. The focus will be on education and dialogue in order to create a cultural change in societies.

INTRODUCTION

“...[T]he minute a goal is scored everybody hugs one another. The most important thing to remember is that the [soccer] ball doesn't care what color you are.”¹

—Clyde Best

At some point during the game, the opposing team's fans start making noise; it takes a few seconds to realize that they are

* LLM in Dispute Resolution, Straus Institute, Pepperdine School of Law, 2017; Masters of International Law, University of Judicial Studies, Tehran, 2016; L.L.B. University of Allameh Tabataba'i, Tehran 2003; The author wishes to thank Jeffery Benz, arbitrator with CAS and JAMS, who brought up the idea of this article and was a great help in presenting this debate.

¹ Gary Morley, *Racism in Football: 'It's Not Black and White,'* CNN (Feb. 23, 2012), <http://edition.cnn.com/2012/02/23/sport/football/football-racism-england/index.html>.

directing monkey chants at one of the players.² Throwing bananas at players,³ racial abuse by chants⁴ or by gestures,⁵ matches being suspended,⁶ and players leaving the field in tears,⁷ are just a few examples of how racism is undermining one of the most popular sports in the world.

Rooted in societies and cultures, racism has penetrated soccer stadiums. “[R]acism is the belief in the superiority of a race, religion or ethnic group. It is most commonly expressed through less favorable treatment, insulting words or practices which cause disadvantage.”⁸ It is a complicated network of behaviors, signs, symbols, letter and number codes, runes, clothing brands, and prints, each carrying a different meaning based on social and political backgrounds.⁹ Similar to organized

² Alexander Wynn, *Red Card Racism: Using the Court of Arbitration for Sport (CAS) to Prevent and Punish Racist Conduct Perpetrated by Fans Attending European Soccer Games*, 13 CARDOZO J. OF CONFLICT RESOL. 313, 314 (2011).

³ *Dani Alves: Barcelona Defender Eats Banana After It Lands on Pitch*, BBC SPORT (Apr. 28, 2014), <http://www.bbc.com/sport/football/27183851>.

⁴ Simon Romero, *Neymar’s Injury Sidelines Effort to End World Cup Racism*, N.Y. TIMES (July 7, 2014), <https://www.nytimes.com/2014/07/08/world/americas/neymars-injury-sidelines-effort-to-end-world-cup-racism.html>; see also Marcus Christenson, *Euro 2012: Mario Balotelli Threatens to ‘Kill’ Banana-Throwing Fans*, THE GUARDIAN (May 29, 2012), <http://www.theguardian.com/football/2012/may/30/euro-2012-mario-balotelli-italy>.

⁵ *West Ham Fans Chant ‘Hitler’s Coming for You’ at Tottenham Crowd*, THE TELEGRAPH (Nov. 26, 2012), <http://www.telegraph.co.uk/sport/football/teams/tottenham-hotspur/9702512/West-Ham-fans-chant-Hitlers-coming-for-you-at-Tottenham-crowd.html> (pointing out that fans were hissing numerous times during the game mocking the incident of gassing Jews during the second world war).

⁶ *Milan Friendly Abandoned After Players Protest Against Racist Chants*, THE GUARDIAN (Jan. 3, 2013), <https://www.theguardian.com/football/2013/jan/03/milan-friendly-abandoned-racist-chants>.

⁷ *Racist Serb Fans Torment Brazilian Footballer Everton Luiz*, BBC (Feb. 20, 2017), <http://www.bbc.com/news/world-europe-39028982>.

⁸ Union of European Football Associations, *Unite Against Racism in European Football: UEFA GUIDE TO GOOD PRACTICES 8* (July 2003), <http://www.uefa.com/newsfiles/82716.pdf> [hereinafter UEFA].

⁹ See Fare Network, *Monitoring Discriminatory Signs and Symbols in European football* (June 2016), http://www.farenet.org/wp-content/uploads/2016/10/Signs-and-Symbols-guide-for-European-football_2016-2.pdf [hereinafter FARE NETWORK].

crime groups, this system attacks human dignity.¹⁰ Presently, soccer stadiums are in a unique position in the global fight against racism.

The fight against racism in sports is evolving, primarily through the conduct of the International Federation of Association Football (FIFA) and the Union of European Football Associations (UEFA), with the support of awards from the Court of Arbitration for Sports (CAS). CAS jurisprudence has helped clarify the relevant elements of fan-based racism, which is the main subject of this article. Meanwhile, international law, particularly during the past two decades, has frequently addressed this phenomenon in sporting venues.¹¹

This article will analyze the intersection between international law, culture, and fan-based racism in soccer stadiums. Part I describes the problem. Part II discusses the regulatory framework in international and organizational levels. Part III analyzes the jurisprudence of the CAS, which helps clarify the legal framework applicable to those who are involved in sports. Part IV uncovers the roots and origins of racism, and concludes that the current approach of rejecting any kind of cultural justification can be effective if it is coupled with education.

I. FANS, RACISM, AND SOCCER

Multiculturalism creates complicated challenges for modern communities.¹² People with various cultural and national backgrounds participate in sports.¹³ This makes sports one of the most important avenues for introducing multiculturalism into societies through hiring players from different parts of the world solely based on their skills and abilities. Soccer's domination—its “economic primacy,” particularly in Europe, and vast media

¹⁰ See FARE NETWORK, GLOBAL GUIDE TO DISCRIMINATORY PRACTICES IN FOOTBALL (June 2017), <http://www.farenet.org/wp-content/uploads/2017/06/Global-guide-to-discriminatory-practices-in-football-low-res.pdf> [hereinafter FARE Global Guide].

¹¹ See discussion *infra* Part II. Section A.

¹² SANDRA FREDMAN, DISCRIMINATION LAW 52 (2nd ed. 2011).

¹³ Human Rights Council, *Rep. of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action on Its Ninth Session*, ¶ 56, U.N. Doc. A/HRC/19/77 (Feb. 20, 2012).

coverage around the world—put it on the frontline in the debate on racism and discrimination in sports.¹⁴

Statistics and research show that soccer in the European Union is most impacted by racism.¹⁵ Researchers have traced racism in European soccer all the way back to the 1920s when Jack Lesley was playing for Plymouth FC. Racism in soccer grew during the 1970s and 1980s when Clyde Best and Viv Anderson—the first black player to be capped by England—gave detailed accounts of racial abuses they suffered as players.¹⁶

Incidents of fan violence are most commonly the result of racial biases.¹⁷ In fact, spectator violence in soccer brought attention to this problem.¹⁸ In both men’s professional and amateur soccer, regulators have recognized fans as the primary source of racist incidents.¹⁹ During the past years, soccer stadiums have also been convenient places for racist groups to cry out their hate. Yet, soccer is not the source of racism, but rather an easy platform for extremist groups to promote their racist views and behaviors.²⁰

A report monitoring racist abuses, mainly by spectators,²¹ at both the professional and amateur level,²² and throughout almost all the European Union, determined most incidents were targeting “dark skin” athletes with other discriminatory cases

¹⁴ Mutuma Ruteere (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Report to GA: Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of the Follow-up to the Durban Declaration and Programme of Action*, ¶ 63, U.N. Doc. A/69/340 (Aug. 22, 2014).

¹⁵ European Union Agency for Fundamental Rights, *Racism, Ethnic Discrimination and Exclusion of Migrants and Minorities in Sport: A Comparative Overview of the Situation in the European Union*, at 33, http://www.furd.org/resources/Report-racism-sport_EN.pdf (last visited Apr. 28, 2018) [hereinafter: FRA Report].

¹⁶ Morley, *supra* note 1.

¹⁷ FRA Report, *supra* note 15, at 15; *see, e.g.* Adrien Vicente and Jean Decotte, *Homophobia Permeates Football World in Spain*, AFP (June 24, 2017) <https://sports.yahoo.com/homophobia-permeates-football-world-spain-010918778--sow.html>.

¹⁸ FRA Report, *supra* note 15, at 15.

¹⁹ *Id.* at 7.

²⁰ HOUSE OF COMMONS: CULTURE, MEDIA AND SPORT COMMITTEE, *RACISM IN FOOTBALL, 2012–13*, H.C. 89, at 8 (UK), <http://www.furd.org/resources/Racism%20in%20football%20Committee%20report%20Volume%201%20sep%202012.pdf>.

²¹ FRA Report, *supra* note 15, at 15.

²² *Id.* at 35.

against immigrants.²³ However, racist conduct is also directed against minority group athletes²⁴ from various racial, religious, or ethnic backgrounds. The racist conduct usually includes chanting and insults such as “Go back to Africa!” or “jungle shouts” directed at black athletes²⁵ or their families;²⁶ or anti-Semitism²⁷ and anti-Roma²⁸ slurs.²⁹ Groups often exhibit their racist messages through signs or banners with culturally sensitive symbols, like banners containing the Celtic cross, which is the symbol of the international “White Power” movement,³⁰ or neo-Nazi symbols in support of the former fascist regime.³¹ Similarly, these signs or banners may generally target other persons, like club representatives, referees,³² or the fans.³³

²³ *Id.* at 30.

²⁴ FRA Report, *supra* note 15, at 11. On 17 November in Madrid, several hundred Spanish supporters hurled racist remarks at black players on the English team which was playing a friendly match against Spain. *See* Diène, *supra* note 21, ¶ 31. In October, racist, anti-black songs were heard during a Champions League match being played in Athens between Panathinaikos and Arsenal. *Id.*

²⁵ Doudou Diène (Special Rapporteur of the Commission on Human Rights on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Rep. to General Assembly: The Fight Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action*, ¶ 32, A/59/329, (Sept. 7, 2004).

²⁶ *Id.* ¶ 31.

²⁷ *See* Matthew R. Watson, *The Dark Heart of Eastern Europe: Applying the British Model to Football-Related Violence and Racism*, 27 EMORY INT'L L. REV. 1055, 1058–59 (2013). In Lodz, Poland, a city where the Nazis killed almost its entire 230,000 Jewish residents during World War II, football supporters use the word “Jew” and Jewish imagery as an insult to attack opposing teams. *Id.* at 1058.

²⁸ *See* Phil Cain, *Hungary Nationalists Whip Up Anti-Roma Feelings*, BBC (Sept. 2, 2012), <http://www.bbc.com/news/world-europe-19439679>.

²⁹ Wojciech Zurawski, *Polish Far-right Groups Stir Up Anti-Roma Hatred in the Shadow of Auschwitz*, THE INDEPENDENT (July 9, 2014), <http://www.independent.co.uk/news/world/europe/polish-far-right-groups-stir-up-anti-roma-hatred-in-the-shadow-of-auschwitz-9595882.html>.

³⁰ *Celtic Cross, General Hate Symbols*, ADL, <https://www.adl.org/education/references/hate-symbols/celtic-cross> (last visited Apr. 4, 2018).

³¹ FRA Report, *supra* note 15, at 31.

³² *See* FRA Report, *supra* note 15, at 11.

³³ Doudou Diène (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance) *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”*, ¶ 53, U.N. Doc. A/HRC/4/19 (Jan. 12,

Despite efforts by Soccer Governing Bodies (SGBs) to fight racism in stadiums,³⁴ the problem is continuing. Before the Euro 2012 tournament, BBC aired a documentary in which soccer stars were discouraging fans from going to stadiums because of racial hatred and violence.³⁵ In another instance, Non-governmental organizations (NGOs) confirmed different forms of fan-based racism occurred in Russian soccer one year before hosting the FIFA World Cup.³⁶ Thus, the problem not only still exists but remains common.³⁷

This implies that the current measures and policies are not working effectively. Mr. Doudou Diène, Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, found that despite huge media coverage, the condemnations and measures taken have not reflected the seriousness and gravity of

2007). He wishes to refer in particular to the racist and anti-Semitic incidents that took place in Paris at the end of a match between Paris Saint-Germain and Hapoel Tel Aviv on 23 November 2006, during which hooligans attacked a young French national of Jewish origin and a black plain-clothes policeman who had tried to protect him. Caroline Wyatt, *France Faces Up to Football Hooliganism*, BBC NEWS (Nov. 27, 2006), <http://news.bbc.co.uk/2/hi/europe/6189888.stm>. The policeman used his service weapon, which resulted in the death of one of the attackers and seriously injured another. *Id.* In 2015 in Paris, Chelsea fans in metro pushed back a black man and refused to let him board the Metro singing a racist chant. See Roisin O'Connor & John Lichfield, *Chelsea Racism Video: French Police Hunt for Football Fans Filmed Pushing Black Man off Paris Metro*, THE INDEPENDENT (Feb. 18, 2015), <http://www.independent.co.uk/news/uk/chelsea-fans-filmed-pushing-black-man-off-paris-metro-10052713.html>.

³⁴ For example, football-related arrests and banning orders in season 2014 to 2015 of UK government show steady decrease. See UK Home Office, *Official Statistics Football-Related Arrests and Banning Orders Season 2014 to 2015*, GOV.UK (Nov. 26, 2015), <https://www.gov.uk/government/publications/football-related-arrests-and-banning-orders-season-2014-to-2015/football-related-arrests-and-banning-orders-season-2014-to-2015>.

³⁵ *Euro 2012: Stadiums of Hate*, BBC PANORAMA (June 3, 2012), <http://www.bbc.co.uk/programmes/b01jk4vr>.

³⁶ See Natalia Yudina, *Xenophobia in Figures: Hate Crime in Russia and Efforts to Counteract It in 2017*, SOVA CENTER FOR INFORMATION AND ANALYSIS (Feb. 12, 2018), <http://www.sova-center.ru/en/xenophobia/reports-analyses/2018/02/d38830/>.

³⁷ SOVA CTR. FOR INF. AND ANALYSIS & THE FARE NETWORK, A CHANGING PICTURE: INCIDENTS OF DISCRIMINATION IN RUSSIAN FOOTBALL 2015-2017 9 (2017), http://www.sova-center.ru/files/xeno/Russia_report.pdf.

the situation.³⁸ For example: organizing “inclusivity zones” as a safe area for fans inside and outside the stadiums is not only ineffective in eradicating racism from soccer stadiums, but also it sends a message that the only way to protect yourself from abuse is to stay away from the stadiums.³⁹

Should soccer be a source of unity or hatred?⁴⁰ Despite recognizing sports as a tool to promote equality⁴¹ and inclusion in societies, “to foster peace and development and to contribute to an atmosphere of tolerance and understanding,”⁴² soccer is the subject of widespread criticism based on the “seriousness of racism in sports.”⁴³

II. LEGAL EFFORTS TO FIGHT RACISM

Xenophobia usually brings forth acts of discrimination and violence that, in grave circumstances, can lead to genocide and ethnic cleansing.⁴⁴ In fact, it was the atrocities of World War II that caused the international community to take steps against

³⁸ Doudou Diène (Special Rapporteur of the Commission on Human Rights on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *The fight Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action*, ¶ 39, U.N. Doc. A/60/283 (Aug. 19, 2005).

³⁹ Watson, *supra* note 27, at 1062.

⁴⁰ GNK Dinamo v. Union des Associations Europeennes de Football, CAS 2013/A/3324, ¶ 1.1 (June 13, 2014), https://www.uefa.com/MultimediaFiles/Download/uefaorg/CASdecisions/02/47/25/32/2472532_DOWNLOAD.pdf [hereinafter *Dinamo v. UEFA*].

⁴¹ Human Rights Council Res. 24/1, U.N. Doc. A/HRC/RES/24/1, at 3 (Oct. 8, 2013).

⁴² Human Rights Council Res. 13/27, U.N. Doc. A/HRC/RES/13/27, at 2 (Apr. 15, 2010).

⁴³ G.A. Res. 71/179, Combating Glorification of Nazism, Neo-Nazism and Other Practices that Contribute to Fueling Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, at 2 (Dec. 19, 2016) (Despite these efforts, the UN General Assembly expressed “deep concern” about “manifestations of violence and terrorism incited by violent nationalism, racism, xenophobia and related intolerance, including during sports events”). *See also* Ruteere, *supra* note 14, ¶ 42.

⁴⁴ LI-ANN THIO, *MANAGING BABEL: THE INTERNATIONAL LEGAL PROTECTION OF MINORITIES IN THE TWENTIETH CENTURY* 254 (2005) (considering the situation in Rwanda and Kosovo).

discrimination and racism.⁴⁵ Concerned with the deep connection between racism in sports and social-cultural structures, and how racism and discrimination is articulated through sports, United Nations (UN) bodies regularly and carefully observe the circumstances in sports, particularly in soccer.⁴⁶ Particular attention from international law has triggered serious efforts by SGBs to fight racism in stadiums.

International law and human rights norms are related to SGB's work because "FIFA is committed to respect all internationally recognized human rights and shall strive to promote the protection of these rights."⁴⁷ CAS reliance on international law shows the interaction between the court's jurisdiction and the importance of the court's international human rights law analysis.⁴⁸

A. INTERNATIONAL LAW

Dating back to the 17th century and the Treaty of Westphalia, international law "has a long-established approach toward protecting minorities which created obligations for States to tackle diversity problems in their territories."⁴⁹ Under international law, discrimination is a negative concept that States should outlaw.⁵⁰

⁴⁵ NATAN LERNER, *GROUPS RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW* 49 (2d ed. 2003).

⁴⁶ Doudou Diène (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance) *Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination*, ¶ 13, 29, U.N. Doc. E/CN.4/2005/18 (Dec. 13, 2004), <http://undocs.org/E/CN.4/2005/18>; See also Diène, *supra* note 33, ¶ 53.

⁴⁷ FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES 7 (Apr. 2016), http://resources.fifa.com/mm/document/affederation/generic/02/78/29/07/fifastatutsweben_neutral.pdf [hereinafter FIFA Statutes].

⁴⁸ See e.g., *Dinamo v. UEFA*, *supra* note 40, ¶ 9 (referring to a paper of European Commission and a decision of the European Court of Human Rights). See also *Union Cycliste Internationale (UCI) v. Alberto Contador Velasco & Real Federación Española de Ciclismo (RFEC)*, CAS, 2011/A/2384 & 2386, ¶ 21–32 (Feb. 6, 2012) (the panel acknowledges that the court is bound by provisions of European Convention on Human Rights); *Fenerbahçe SK v. Union des Associations Européennes de Football (UEFA)*, CAS, 2013/A/3139, ¶ 83–103 (Dec. 5, 2013).

⁴⁹ THIO, *supra* note 44, at XXIX.

⁵⁰ LERNER, *supra* note 45, at 30.

After the Second World War, racism was the primary cause that pushed the international community toward establishing an international regime to combat discrimination.⁵¹ In 1965, the Convention on Elimination of Racial Discrimination was adopted as the most important anti-racist international document.⁵² However, some other international documents have addressed discrimination based on race.⁵³ Regionally, Europe has the most coherent efforts to combat discrimination and racism.⁵⁴

The international community paid particular consideration to the issues of racism in sports in two major documents. The International Convention against Apartheid in Sports⁵⁵ was the first international effort to tackle systematic racism in sports. The convention aimed to avoid “sport contact” with those countries that systematically apply racism in sports,⁵⁶

⁵¹ *Id.* at 30.

⁵² ANN-MARIE MOONEY COTTER, *RACE MATTERS: AN INTERNATIONAL LEGAL ANALYSIS OF RACE DISCRIMINATION* 55 (2006).

⁵³ *See e.g.*, G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); International Covenant on Economic Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. UNESCO also has adopted five declarations on racial issues: 1950 The Race Question, the 1951 Statement on the Nature of Race and Race Differences, the 1964 Propositions on the Biological Aspects of Race, the 1967 Statement on Race and Racial Prejudice and 1978 Declaration on Race and Racial Prejudice. *See generally UNESCO on Race*, HONESTTHINKING.ORG (May 5, 2018), <http://www.honestthinking.org/en/unesco/index.html>.

⁵⁴ The European Convention on Human Rights adopted in 1950 emphasizes enjoyment of rights and freedoms enshrined in the Convention without discrimination on any ground. *See What is the European Convention on Human Rights?*, EQUALITY AND HUMAN RIGHTS COMM., <https://www.equalityhumanrights.com/en/what-european-convention-human-rights> (last visited Apr. 28, 2018). Other documents include: the 1995 Council Resolution on the Fight Against Racism, Xenophobia and Anti-Semitism on the Fields of Employment and Social Affairs, the 1996 Council Resolution concerning European Year against Racism, and the 1997 Council Declaration on the Fight Against Racism, Xenophobia and Anti-Semitism in the Youth Field. Tamera K. Hervey, *Putting Europe’s House in Order: Racism, Race, Discrimination, and Xenophobia after the Treaty of Amsterdam*, in *LEGAL ISSUES OF THE AMSTERDAM TREATY* 346–49 (David O’Keefe & Patrick Twomey eds., 1999).

⁵⁵ International Convention Against Apartheid in Sports, Dec. 10, 1985, 1500 U.N.T.S. 177, <https://treaties.un.org/doc/Publication/UNTS/Volume%201500/volume-1500-I-25822-English.pdf> [hereinafter ICAAS].

⁵⁶ LERNER, *supra* note 45, at 128.

and recognized that only “merit” should be the deciding factor to participate in sports.⁵⁷

Sport was again on the agenda in the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa, where the International Olympic Committee was one of the participants. Emphasizing the Olympic spirit, the Durban Declaration highlights the role of sports in promoting tolerance, solidarity, and peace.⁵⁸ The participants also recognized sports as a means to prevent and fight the rise of “neo-fascist, violent nationalist ideologies which promote racial hatred and racial discrimination.”⁵⁹ In order to take a stronger stance against racism in sports, the Declaration recognizes the responsibility of States, intergovernmental organizations, IOC, and international and regional sports federations.⁶⁰ It urges stakeholders to take all possible measures to combat racism and, particularly calls attention to the role of youth education through sports.⁶¹ Following the Durban conference, the Committee on the Elimination of Racial Discrimination encouraged all national and international sport entities to “promote a world of sports free from racism, racial discrimination, xenophobia and related intolerance.”⁶²

The work of the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance has created valuable literature regarding racism in sport. The General Assembly highlights the role of the Special Rapporteur among others in the fight for eliminating racism in sports.⁶³ A core component of this mechanism is cooperation between States and international sports entities with the help of relevant human rights procedures.⁶⁴

⁵⁷ ICAAS *supra* note 55, at 179.

⁵⁸ World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the World Conference*, ¶ 218 U.N. Doc. A/CONF.189/12 (Sep. 8, 2001).

⁵⁹ *Id.* ¶ 86.

⁶⁰ *Id.* ¶ 218.

⁶¹ *Id.* ¶ 86.

⁶² U. N. Committee on the Elimination of Racial Discrimination, *General recommendation No. 33: Follow-up to the Durban Review Conference*, U.N. Doc. CERD/C/GC/33, ¶ 2(c) (Sep. 29, 2009) [hereinafter *General Recommendation No. 33*].

⁶³ G.A. Res. 58/160, ¶ 54 (Dec. 22, 2003).

⁶⁴ Ruteere, *supra* note 14, ¶13; *See also* Doudou Diène (Special Rapporteur on the Fight Against Racism, Racial Discrimination, Xenophobia

The Special Rapporteur began its mission in 1993 under the mandate of the Commission on Human Rights, working to encourage societies and the international community to work against racial hatred and harassment.⁶⁵ In this context, sports:

[h]ave the capacity to demystify racial superiority discourses, making them an important and practical instrument for combating racism and proving that athletes succeed in sports independent of their skin colour Furthermore, sports can be used as a positive symbol for social acceptance by conveying the image of multi-ethnic teams representing one nation and competing for a common goal.⁶⁶

Additionally, the Special Rapporteur keeps a close and strong relationship with sport governing bodies by writing to FIFA and the IOC about growing racism on the soccer field and in other sports,⁶⁷ and by meeting with high profile sports officials.⁶⁸

Generally speaking, international law under the mandate of the Special Rapporteur highlights the capacity of sports in promoting values such as equality, inclusion, diversity, and understanding, and calls States to use this potential to break the status quo of racial superiority.⁶⁹ It emphasizes the power of sport to bring people together based on their skills,⁷⁰ and describes the unification power of sport as a pattern for positive inclusion.⁷¹

and Related Intolerance), *Report to General Assembly: The fight against racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action*, U.N. Doc. A/58/313, ¶ 42 (Aug. 22, 2003).

⁶⁵ Diène, *supra* note 64, ¶ 31. Human Rights Council extended the Special Rapporteur's mission until 2020. See Human Rights Council Res. 34/35, U. N. Doc. A/HRC/RES/34/35 (Mar. 24, 2017).

⁶⁶ Ruteere, *supra* note 14, ¶ 15.

⁶⁷ Diène, *supra* note 64, ¶ 29.

⁶⁸ Diène, *supra* note 38, ¶ 41.

⁶⁹ *UN General Assembly: Human Rights Expert Calls for Global Action to Eradicate Racism from Sports*, THE OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUM. RIGHTS (Nov. 4, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15247&LangID=E>.

⁷⁰ *Id.*

⁷¹ *Id.*

Nevertheless, the coordinative nature of international law and lack of an authoritative enforcement body,⁷² leaves the police powers to national jurisdictions. To keep the governments out of this realm, sports organizations should play a more effective role.

B. SOCCER GOVERNING BODIES (SGBS)

Soccer governing bodies are on the front line of fighting racism. Reacting to international concerns about the existence of racist conduct in sports, especially in stadiums, FIFA and UEFA have lead the efforts to eradicate racism from soccer.⁷³ This commitment has been praised by international experts.⁷⁴ Almost all national soccer federations in the Member States have introduced provisions establishing the principle of anti-discrimination, or anti-racism, within their statutes or similar documents.⁷⁵ However, there should be stronger measures of action to effectively eliminate racism in stadiums.

1. UEFA

Sports in the European Union are heavily regulated by European Union law. In many cases, it was European Union law that specified the limits and set the borders for sport activities.⁷⁶ This strong legal framework has, in some cases, influenced sports governing bodies on a global level and forced them to comply with European Union law.⁷⁷ The coherent European Union approach to combat racism, compared to FIFA, has resulted in more

⁷² ROBERT KOLB, *THEORY OF INTERNATIONAL LAW* 157–158 (2016).

⁷³ Diène, *supra* note 38, ¶ 41.

⁷⁴ *Id.* ¶ 44–45.

⁷⁵ FRA Report, *supra* note 15, at 42.

⁷⁶ See Case C-415/93, *Union Royale Belge des Societes de Football Association ASBL [Royal Belgian Football Association] [URBSFA] v. Bosman*, 1995 E.C.R. I-4921.

⁷⁷ FIFA struggled to apply its 6+5 rule because the EU's legal framework has recognized the discriminatory nature of this rule and thus UEFA could not enforce this rule based on its conflict with EU labor law and the Bosman ruling. See R. C. R. SIEKMANN, *INTRODUCTION TO INTERNATIONAL AND EUROPEAN SPORTS LAW* 258–65 (2012).

disciplinary sanctions,⁷⁸ and, since 2008, even criminal legislation.⁷⁹

Regulators considered racist conduct and discrimination in European sports as a threat to sports during the late 1990s.⁸⁰ The European Union's legal framework was successful in creating a well-established structure to fight racism with UEFA working as the pillar to bring together governmental and non-governmental organizations, and serves as a good model for other sports.⁸¹ In fact, UEFA requires different European bodies to take action against racism, notwithstanding those bodies' own actions against racism.⁸²

Under this framework, UEFA created a well-designed system to combat racism.⁸³ One of UEFA's objectives is

⁷⁸ See FRA Report, *supra* note 15, at 26 (“Between the 2003-2004 and 2008-2009 seasons, negative sanctions for racist behaviour in European Cup Competitions or European Championship Games were imposed at least 41 times on clubs and football federations, including fines or stadium suspensions. In comparison, FIFA has imposed fines on member associations in relation to Article 58 of its Disciplinary Code twice in the past five years (among them one European federation).”). Criminal proceedings against football fans involved in racist conduct, have been recorded in some countries like Estonia, France and UK. *Id.* at 40.

⁷⁹ *Id.* at 11.

⁸⁰ *Id.* at 15.

⁸¹ *Id.* at 25.

⁸² See, e.g., Council of Europe, European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches art. 3, Aug. 19, 1985, 1496 U.N.T.S. 125; Council of Europe, Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events, CETS No.218 <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680666d0b> (July 3, 2016); EUR. PARL., DOC. 0069/2005, ¶ D(3), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+WDECL+P6-DCL-2005-0069+0+DOC+PDF+V0//EN&language=EN> (Nov. 30, 2005); EUR. PARL., DOC. P6_TA(2006)0080, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2006-0080+0+DOC+PDF+V0//EN> (2006); *Media Against Racism in Sport*, EUROPEAN UNION AND THE COUNCIL OF EUROPE, http://www.coe.int/t/dg4/cultureheritage/mars/default_en.asp (2014); European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation N°12: Combating racism and racial discrimination in the field of sport*, COUNCIL OF EUROPE http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/Recommendation_12_en.asp (Dec. 19, 2008).

⁸³ FRA Report, *supra* note 15, at 7–8.

promoting peace and understanding through soccer regardless of race.⁸⁴ It calls on member associations to adopt effective policies and rigid legal actions to wipe out racism and discrimination in soccer.⁸⁵ Zero tolerance against racism and going beyond differences is one of UEFA's eleven values, which allows soccer to be an example for other sports.⁸⁶ UEFA recognizes speaking out against racism as a part of soccer players' and coaches' duties.⁸⁷ UEFA sustainability plans include recognizing sports' social responsibility in the EU,⁸⁸ and combating racism and discrimination.⁸⁹

In 2008, UEFA took further action through guidelines and policies to apply anti-discrimination regulations on the club licensing process to oblige the clubs to adopt anti-discriminatory and anti-racist approaches.⁹⁰ Provisions against discrimination exist in all European soccer federations' statutes and two-thirds of them expressly penalize racial abuses.⁹¹ UEFA organizes official days to tackle racism and discrimination each season, which is match day three of UEFA Champions League and UEFA Europa League.⁹² UEFA's disciplinary regulations identify sanctions for racist behaviors ranging from suspension to heavy fines and stadium bans.⁹³

⁸⁴ Union of European Football Association (UEFA), UEFA Statute, art. 2(1)(b) (2014) [hereinafter UEFA Statute].

⁸⁵ UEFA Statute, *supra* note 84, at art. (7)(7).

⁸⁶ *Eleven Values*, UEFA.COM <http://www.uefa.org/about-uefa/eleven-values/> (last visited Apr. 20, 2018).

⁸⁷ UEFA, IX. RESOLUTION EUROPEAN FOOTBALL UNITED AGAINST RACISM, ¶ 10 (2013), http://www.uefa.org/MultimediaFiles/Download/EuroExperience/uefaorg/Anti-racism/01/95/54/81/1955481_DOWNLOAD.pdf [hereinafter UEFA Resolution]; *see also* EUR. PARL. DOC. 0069/2005, *supra* note 82, ¶ D(3).

⁸⁸ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, art. 165, Dec 13, 2007, 2007 O.J. (C306).

⁸⁹ FRA Report, *supra* note 15, at 25.

⁹⁰ UEFA, UEFA CLUB LICENSING AND FINANCIAL FAIR PLAY REGULATIONS art. 23 (2015), https://www.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/02/26/77/91/2267791_DOWNLOAD.pdf.

⁹¹ FRA Report, *supra* note 15, at 7.

⁹² UEFA, TACKLING RACISM IN CLUB FOOTBALL: A GUIDE FOR CLUBS 17 (2006), http://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/448328_DOWNLOAD.pdf.

⁹³ UEFA, DISCIPLINARY REGULATIONS art. 8 (2017) [hereinafter UEFA DR].

2. FIFA

FIFA assumes racism is an “immense harm to sports.”⁹⁴ Traditionally, FIFA has been active in the fight against racism in areas ranging from regulating and sanctions to symbolic moves to promote tolerance and encourage fair play.⁹⁵ These efforts can be traced back to the 1960s, when FIFA was trying to ensure respect and peace in its territory.⁹⁶ “[D]iversity and antidiscrimination” programs are some essential elements of FIFA’s agenda to implement its social responsibility.⁹⁷ FIFA has recognized this as a human rights issue of “high relevance”⁹⁸ as highlighted in FIFA’s annual member associations conference.⁹⁹ Racism is one of the issues that FIFA continually take action against¹⁰⁰ to protect FIFA’s values and stop procedures that might endanger the game’s integrity.¹⁰¹

FIFA’s first action was in 2001, when its congress ratified the resolution against racism in Buenos Aires, Argentina. This recognized soccer’s responsibility of “power and influence” on society.¹⁰² One year later, FIFA launched the first international anti-discrimination day to raise awareness about this phenomenon.¹⁰³ In March 2003, the FIFA Executive Committee adopted the handshake before the start of games as an indication

⁹⁴ Josip Šimunič v. FIFA, CAS, 2014/A/3562, ¶114 (Jul. 29, 2014) [hereinafter Šimunič v. FIFA].

⁹⁵ Ruteere, *supra* note 14, ¶ 35.

⁹⁶ See FIFA, GOOD PRACTICE GUIDE ON DIVERSITY AND ANTI-DISCRIMINATION 14 (2015) [hereinafter FIFA Good Practices] http://resources.fifa.com/mm/Document/AFSocial/Anti-Racism/02/70/94/34/goodpracticeguide_Neutral.pdf.

⁹⁷ *Id.* at 9.

⁹⁸ FIFA Statutes, *supra* note 47, at 46.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 13.

¹⁰¹ *Id.* at 6.

¹⁰² *Extraordinary FIFA Congress ratifies resolution against racism*, FIFA.COM (July 7, 2001), <http://www.fifa.com/about-fifa/news/y=2001/m=7/news=extraordinary-fifa-congress-ratifies-resolution-against-racism-78421.html>.

¹⁰³ *FIFA Anti-Discrimination Days*, FIFA.COM, <http://www.fifa.com/sustainability/news/y=2007/m=5/news=fifa-anti-discrimination-days-518198.html> (last visited April 20, 2018).

that “respect for rivals and referees comes before the contest itself.”¹⁰⁴

In 2004, FIFA amended Article 3 of its statutes to further develop the scope of its anti-discrimination efforts.¹⁰⁵ To encourage its goal of promoting diversity, in March 2005, FIFA’s Executive Committee created a team of ambassadors against racism using past and present soccer legends.¹⁰⁶

The formation of the FIFA Task Force Against Racism and Discrimination in 2013 and the following resolution calling for education, prevention, and sanction is of great importance.¹⁰⁷ The task force dissolved in 2016,¹⁰⁸ after providing FIFA with recommendations that became the foundation of FIFA’s ongoing plans in the fight against racism.

FIFA’s discrimination handbook sets forth the framework for future actions and provides that the pledge to overcome racism requires the contribution of “all persons involved directly or indirectly with the sport of [soccer] at all levels and in all countries,”¹⁰⁹ from governmental officials, referees, and the media. It also explicitly addresses soccer fans, asking them to take related measures in the battle against racism.¹¹⁰

The fight against racism takes place in five different fronts: (1) regulations, (2) communication, (3) controls and sanctions, (4) networking and cooperation, and (5) education.¹¹¹ These factors can help design a national action plan to implement Article 4 of FIFA’s statutes.

¹⁰⁴ Diène, *supra* note 46, ¶ 33.

¹⁰⁵ Previously article 2 par 3.1 of the FIFA Statutes stating: “there shall be no discrimination against a country or an individual for reasons of race, religion or politics” is amended to: “Article 3 – Non-discrimination and stance against racism: Discrimination of any kind against a country, private person or groups of people on account of ethnic origin, gender, language, religion, politics or any other reason is strictly prohibited and punishable by suspension or expulsion.” FIFA GOOD PRACTICES, *supra* note 96, at 22.

¹⁰⁶ Diène, *supra* note 46, ¶ 43.

¹⁰⁷ FIFA, *Resolution on the Fight Against Racism and Discrimination*, FIFA Cong. Res. 11.2, 63d Cong., at 2–3 (May 31, 2013), https://resources.fifa.com/mm/document/afsocial/anti-racism/02/08/56/92/fifa-paper-against-racism-en-def_neutral.pdf.

¹⁰⁸ *Fifa Says Anti-Racism Taskforce Had Completed Work*, BBC NEWS (Sept. 26, 2016), <http://www.bbc.com/sport/football/37470473>.

¹⁰⁹ FIFA GOOD PRACTICES, *supra* note 96, at 11.

¹¹⁰ *Id.* at 11–12.

¹¹¹ *Id.* at 16.

FIFA's statutes state that any discriminatory conduct can be punished by suspension or expulsion.¹¹² Spectators are also subject to FIFA's disciplinary code.¹¹³ FIFA adopted measures that include the removal of fans from stadiums and police intervention when fans engage in racist conduct.¹¹⁴ Moreover, Law 5 of the Laws of the game clearly states: "The referee stops, suspends or abandons the match because of outside interference of any kind."¹¹⁵ This also applies to misconduct by spectators.¹¹⁶ Subsequently, Law 5 says that if this violation is by a supporter, then FIFA will impose a minimum stadium ban of two years on that person.¹¹⁷ "A stadium ban can prohibit someone from entering the confines of one or several stadiums."¹¹⁸

FIFA also imposes sanctions against soccer associations for their fan's behaviors with the assistance of its Anti-Discrimination Monitoring System. Started during the 2018 FIFA World Cup Qualifying round, FIFA has used this system to open "disciplinary proceedings against the associations of Chile, Paraguay, Peru, Mexico, El Salvador, Honduras, and Croatia."¹¹⁹

III. ANALYSIS OF LEGAL FRAMEWORK AGAINST RACISM IN SOCCER

Despite these measures by sport governing bodies, soccer stadiums are still struggling with the plague of racism. One reason may be the reluctance of SGBs to apply harsh sanctions resulting from a lack of independence.¹²⁰ The lack of appeals on fines imposed by UEFA is an indication that parties regard the fines as insignificant.¹²¹ Another reason is that sanctions are limited to the

¹¹² FIFA Statutes, *supra* note 47, at 6.

¹¹³ FIFA, FIFA DISCIPLINARY CODE 11 (2011 ed.)
<https://resources.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf> [hereinafter FIFA DC].

¹¹⁴ *See id.* at art. 58(3).

¹¹⁵ FIFA GOOD PRACTICES, *supra* note 96, at 40.

¹¹⁶ *Id.*

¹¹⁷ FIFA DC, *supra* note 113, at art. 58.

¹¹⁸ *Id.* at art. 21.

¹¹⁹ *FIFA Sanctions Several Football Associations After Discriminatory Chants by Fans*, FIFA.COM (May 27, 2016),
<http://www.fifa.com/governance/news/y=2016/m=5/news=fifa-sanctions-several-football-associations-after-discriminatory-chan-2792733.html>.

¹²⁰ *See Wynn, supra* note 2, at 314–16.

¹²¹ *Id.* at 319–20.

matches played under UEFA's control, which allow misbehaving supporters to attend other matches.¹²² This leads to the presumption that UEFA is only sending a mild warning¹²³ for violating discrimination regulations.¹²⁴

In addition, these administrative bodies may lack adequate legal experience, which might result in real abusers remaining unsanctioned. CAS has sometimes criticized FGBs' approach on handling racism,¹²⁵ such as in the case of *Albania v. UEFA*, concerning the incidents of a 2016 UEFA Championship Qualifying match between the Serbian and the Albanian national soccer teams. The CAS panel in that case disagreed with both UEFA's understanding of the incidents of the match and their conclusion about why Albania refused to continue the game.¹²⁶ Unlike UEFA, the panel decided that the reason for abandoning the match was because of the situation created by Serbia's fans.¹²⁷

CAS's independence, compared to UEFA, makes it more effective in combating racism in soccer. CAS panelists can promote dispute settlement or accurately enforce the provisions of UEFA's Disciplinary Regulations and Statutes without fear of becoming victims of politically motivated reprisal.¹²⁸ SGBs and CAS have developed a jurisprudence with regard to racist incidents. All soccer associations, clubs, national and international sports bodies, and fans should be aware of the crucial elements of this jurisprudence. These elements will be further analyzed.

A. RACISM DEFINITION AND CULTURAL EXCEPTIONS

The starting point and the cornerstone of any legal argument is how certain terms/concepts are defined. The definition of racism is one of the key topics in the legal fight against racism in soccer.

¹²² Watson, *supra* note 27, at 1068.

¹²³ See Wynn, *supra* note 2, at 322.

¹²⁴ See *id.* at 321.

¹²⁵ See *Football Association of Albania v. UEFA & Football Association of Serbia*, CAS, 2015/A/3874, ¶ 215 (Jul. 10, 2015) [hereinafter *Albania v. UEFA*].

¹²⁶ *Id.* ¶ 207–253.

¹²⁷ *Id.* ¶ 248.

¹²⁸ See Wynn, *supra* note 2, at 353.

In the case of *Feyenoord v. UEFA*,¹²⁹ a fan threw an inflatable banana onto the field during a match which landed close to where play was stopped.¹³⁰ Following this incident, UEFA held that Feyenoord Rotterdam, the team the fan was associated with, was responsible for the fan's behavior—the club appealed UEFA's decision to CAS.¹³¹ In its submission to the court, the club attacked the definition of racism by challenging the ambiguity of the definition.¹³² CAS affirmed that racism has a wide definition in UEFA regulations, and in recognizing this, it indicated that the definition is broad enough to include all forms of racial conduct and abuses.¹³³

The International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD) defines racial discrimination as:

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹³⁴

FIFA's statute extends the scope of this definition. It prohibits *any kind of discrimination* “against a country, private person or group of people” setting forth factors like “race, skin colour, ethnic, national or social origin, gender, disability, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason.”¹³⁵ FIFA's Code of Ethics bans derogatory conduct with the same elements using

¹²⁹ *Feyenoord Rotterdam N.V. v. Union des Associations Européennes de Football (UEFA)*, CAS, 2015/A/4256 (June 24, 2016) [hereinafter *Feyenoord v. UEFA*].

¹³⁰ *Id.* ¶ 5.

¹³¹ *Id.* ¶ 7–8.

¹³² *Id.* ¶ 27(8).

¹³³ *See id.* ¶ 49.

¹³⁴ International Convention on the Elimination of All Forms of Racial Discrimination art. 1(1), Mar. 12, 1969, 212 U.N.T.S. 660.

¹³⁵ FIFA, FIFA CODE OF ETHICS art. 23 (2012)

https://resources.fifa.com/mm/document/affederation/administration/50/02/82/codeofethics_v211015_e_neutral.pdf.

either *actions* or *words*.¹³⁶ UEFA's statute provides a general image also.¹³⁷ UEFA disciplinary regulations focus on insults to human dignity of a person or group of persons on any grounds.¹³⁸

It is not incidental that neither the Convention on Elimination of Racial Discrimination nor SGBs in their definitions of racism provide examples of racist conduct. In this way, the definition has the flexibility to cover the emergence of new factors based on cultural evolutions. The FIFA handbook also underlines the broad scope of racist behaviors:

When the FIFA task force talks about discrimination, this extends beyond the various ways it is expressed in public or extreme right-wing manifestations such as discriminatory profanities or physical attacks. There are also hidden forms ... this can consist of racist, sexist or disablist jokes, for example, or displaying a preference for a particular group or gender.¹³⁹

FIFA regulations also draw attention to various types of racist conduct "for example, unacceptable levels of verbal provocation or aggression towards players, match officials or opposing fans, racist behaviour and banners and flags that bear provocative or aggressive slogans."¹⁴⁰ Within the sports context, burning a NATO flag in a stadium can be discriminatory against Albanians.¹⁴¹ CAS infers this incident as an offensive act against

¹³⁶ *Id.*

¹³⁷ The article states: "promote football in Europe in a spirit of peace, understanding and fair play, without any discrimination on account of politics, gender, religion, race or any other reason" UEFA Statute, *supra* note 84, at art. 2(1)(b).

¹³⁸ UEFA DR, *supra* note 93, at art. 14.

¹³⁹ FIFA GOOD PRACTICES, *supra* note 96, at 19.

¹⁴⁰ FIFA, FIFA STADIUM SAFETY AND SECURITY REGULATIONS art.

60(2)

http://www.fifa.com/mm/document/tournament/competition/51/53/98/safetyregulations_e.pdf.

¹⁴¹ Marissa Payne, *Drone Toting Pro-Albanian Flag Causes Riots at End of Albania vs. Serbia 2016 Qualifier Early*, WASH. POST, (Oct. 14, 2014, 9:45 PM), https://www.washingtonpost.com/news/early-lead/wp/2014/10/14/drone-toting-albanian-national-flag-causes-riots-that-end-albania-vs-serbia-euro-2016-qualifying-match-early/?utm_term=.c0fd00013082.

Albanians since NATO bombings were needed to stop the ethnic cleansing of the Albanian people.¹⁴²

While the definition of racism has been extended in SGBs' rules, there are some key concepts to determine racist conduct. The definition based on essential elements might include insults, whether by means of words, symbols, or gestures on whatever ground, against a person or group of persons.¹⁴³ If a behavior is racist, it does not matter if it is against the opponents, the club's own players, fans, or officials.¹⁴⁴ Sanctions would follow in any situation.¹⁴⁵

This broad interpretation also rebuffs any cultural justification. In its risk assessing process, the FIFA monitoring system concentrates on factors such as fan cultures, traditional and current rivalries, number of fans, and their combination.¹⁴⁶ In the first case of fan-based racism in soccer before CAS, the use of the word Gypsy was at issue.¹⁴⁷ The appellant in this case was GNK Dinamo, a Croatian club which was trying to contest allegations of racism by providing cultural justifications for the behavior of its fans.¹⁴⁸ In this case, the fans had addressed the executive chairman of their own club in three different matches by chanting "Mamic, gypsy, get out of our temple."¹⁴⁹ The appellant, attempting to prove that the word Gypsy was no racially offensive, argued that:

The term gypsy is not inherently pejorative but derives etymologically from the ancient spelling of Egyptian based on a belief that Egypt was the country of origin of that group. Gypsy in Roma language means "good man". Gypsy can be used as a term of cultural description as in the music group Gypsy King or even of affection as in the

¹⁴² Football Association of Albania v. UEFA, CAS 2015/A/3874, ¶102, (July 10, 2015).

¹⁴³ Dinamo v. UEFA, *supra* note 40, ¶ 9.12.

¹⁴⁴ *Id.* ¶ 9.16.

¹⁴⁵ *Id.* ¶ 9.12.

¹⁴⁶ FIFA GOOD PRACTICES, *supra* note 96, at 38.

¹⁴⁷ Dinamo v. UEFA, *supra* note 40, ¶ 2.2–2.7.

¹⁴⁸ *Id.* ¶ 8.2(4).

¹⁴⁹ *Id.* ¶ 2.5.

UK television programme “My Big Fat Gypsy Wedding.”¹⁵⁰

CAS observed that even if a word in a particular culture is not used as a racial slur, it has to “be viewed against a background of admitted discrimination.”¹⁵¹ The court did take note of the fact that the club chairman was not a Gypsy.¹⁵² Notwithstanding this fact, the court explained that the only reason to use that word was because of the chairman’s support from ethnic minorities including people of Roma.¹⁵³ In the panel’s own words: “even if the word gypsy could in some circumstances not be used as an insult, it does not follow that it can never be used as an insult.”¹⁵⁴ CAS also emphasized that challenging the way the chairman was running the club could be done without using the word Gypsy.¹⁵⁵ The panel decided that the chants were offensive to a group of persons and concluded that the UEFA’s penalties were proportionate and dismissed the appeal.¹⁵⁶

The case of *Simonic v. FIFA* was related to the incidents at a qualifying match between Croatia and Iceland. Because of the match’s result, Croatia qualified for the World Cup.¹⁵⁷ After the match, one of the Croatian players went to the pitch with a microphone and, while interacting with the crowd, started chanting racially charged phrases.¹⁵⁸ The player was suspended for 10 games and received a stadium ban, but later sought an appeal from CAS.¹⁵⁹ On appeal, the player pointed out the words he used came from a 1876 Croatian opera “Nikolce Subic Zrinski” which had patriotic connotation.¹⁶⁰ However, the panel concluded that the words had a different connotation; one that promoted fascist ideology.¹⁶¹ The panel explained that the “Ustaše established a terrorist regime in Croatia, which, amongst others, was responsible for the planned mass murder on different groups

¹⁵⁰ *Id.* ¶ 8(2)–(4).

¹⁵¹ *Id.* ¶ 8.2(1) (reviewing this case against the background of being a Roma in Croatia).

¹⁵² *Id.* ¶ 8.2(4).

¹⁵³ *Id.* ¶ 9.16(2).

¹⁵⁴ *Id.* ¶ 9.15.

¹⁵⁵ *Id.* ¶ 9.16(1).

¹⁵⁶ *Id.* ¶ 9.32.

¹⁵⁷ *Šimunič v. FIFA*, *supra* note 94, ¶ 4.

¹⁵⁸ *Id.* ¶ 5.

¹⁵⁹ *Id.* ¶ 9.

¹⁶⁰ *Id.* ¶ 31(1).

¹⁶¹ *Id.* ¶ 32(4).

of the population based on a deeply repugnant ideology and that the wording used by the Player [could] be associated with this regime.”¹⁶² Based on this understanding, the court rejected the player’s defense that his words were not discriminatory.¹⁶³

Justifications based on culture are rejected even if the conduct is not perceived as insulting or racist in a particular culture. Regardless of how the slogans or words were used in the past, courts look to how they are perceived today.¹⁶⁴ With this analysis, even implied insults toward a person or a group disregarding the cultural factors can be considered racist conduct. In other words, “in the fight against racism, there is little room for actions that, while they might be acceptable by some, are offensive to others.”¹⁶⁵ Therefore, CAS believes that the definition of racial discrimination in SGB’s rules are inclusive and clear.¹⁶⁶

B. REASONABLE OBSERVER TEST

The “reasonable observer” test is another aspect of the broad definition of racism. This is the main test, developed by SGBs and utilized by CAS, which provides that conduct may still be racist even if the target of that specific conduct does not have any negative understanding of it.¹⁶⁷

Based on this concept, whether an observer is located in the stadium or thousands of miles away watching the game on a TV,¹⁶⁸ certain conduct is deemed racist if the reasonable observer recognizes it as an “insult to human dignity.”¹⁶⁹ In other words, conduct may be deemed racist if, in the reasonable observer’s perception, the conduct is derogatory and humiliating for a person or group of persons, even if the target itself does not feel offended.¹⁷⁰

When applying this test, SGBs or CAS rely heavily on certain aspects to prove the racist nature of conduct. In establishing that a particular behavior is racially offensive,

¹⁶² *Id.* ¶ 67.

¹⁶³ *Id.* ¶ 68–69.

¹⁶⁴ *Id.* ¶ 71.

¹⁶⁵ *Feyenoord v. UEFA*, *supra* note 129, ¶ 66.

¹⁶⁶ *Dinamo v. UEFA*, *supra* note 40, ¶ 9.16(2).

¹⁶⁷ *Feyenoord v. UEFA*, *supra* note 129, ¶ 63.

¹⁶⁸ *Id.* ¶ 66.

¹⁶⁹ *Id.*

¹⁷⁰ *Dinamo v. UEFA*, *supra* note 40, ¶ 9.16(2).

regulators account for many surrounding circumstances to prove the reasonableness of observation, such as: “who is saying what to (or about) whom, when, what, how and against what background.”¹⁷¹ Some behavior may not be discriminatory in nature when performed alone, but when combined with other factors it can be seen as racial discrimination by a reasonable person. For example, while a single sign may not be racist, when combined with chants, one may find a racist meaning. This was the case in a dispute regarding the Arphad flag in *Hungary v. FIFA*, where CAS found the use of signs by fascist groups coupled with chants regarding the identity of the opposing team was discriminatory or racist conduct.¹⁷² Another example is when CAS found the use of the word Gypsy in a Croatian soccer stadium to be derogatory, given the fact that Roma children were segregated in Croatian schools.¹⁷³

CAS thoroughly discussed the reasonable observe test in *Simonic*, where a player interacting with the fans said “for the homeland we are ready.”¹⁷⁴ The player claimed that his words were merely pointing to the nationalistic sentiments after qualifying for the World Cup.¹⁷⁵ However, one of FIFA’s anti-racism officer identified the words as a short form of a “Croatian salute that was used during World War II by the fascist Ustaše movement.”¹⁷⁶ FIFA noted that the use of a short form of the infamous slogan does not make a difference in its implied connotation and does not divorce it from the ideologies of that

¹⁷¹ *Id.* ¶ 9.14.

¹⁷² Hungarian Football Fed’n v. Fédération Internationale de Football Ass’n (FIFA), CAS No. 2013/A/3094, at 100 (2014), http://www.tas-cas.org/fileadmin/user_upload/Bulletin_2014_2.pdf [hereinafter *Hungary v. FIFA*].

¹⁷³ *Dinamo v. UEFA*, *supra* note 40, ¶. 9.16 (8).

¹⁷⁴ On 19 November 2013, during the play-off of the preliminary competition European zone of the 2014 FIFA World Cup Brazil in Zagreb, Croatia won the match and qualified for the 2014 FIFA World Cup. Brazil. Šimunič v. FIFA, *supra* note 94, ¶ 4–5. After the game ends, a Croatian player, goes into the pitch and using a microphone starts interacting with the fans. *Id.* While making “rising arm movements” with his left hand, in his native language he first pronounced, “*u boj, u boj*” “to the battle”, replied by the spectators in the stadium with the words “*za narod svoj*” “for your people” or “for your nation” and then repeatedly, *i.e.* four times, the words “*za dom*” “for the homeland”, replied by the spectators at each occasion with the word “*spremni*” “we are ready.” *Id.*

¹⁷⁵ *Id.* ¶ 6.

¹⁷⁶ *Id.*

regime.¹⁷⁷ Without a distinction between the full official form of the slogan and a shorter version used by the player, the panel concluded that the player had used words associated with the fascist regime.¹⁷⁸

The panel specifically addressed the identical form of using the slogan by both the Ustaše regime and the player, which is an interaction from an individual on one side coupled with the response of the crowd on the other side.¹⁷⁹ This uniformity makes a reasonable observer believe that the player intended to communicate a fascist message.¹⁸⁰

Essentially, it is the entire incident which defines the racist conduct. The panel considers the surrounding situations and the combination of conduct performed. Behaviors like raising the left hand and the response of the spectators to the player's words,¹⁸¹ the reaction of other fans in the stadium who felt offended,¹⁸² and other instances of Croatian fans using the Ustaše regime in other matches,¹⁸³ are deciding factors in the Court's analysis. Thus, the conduct is not observed in a vacuum but against the context in which a party performed it.¹⁸⁴

How the act is reflected in society is also of great importance. Here, especially absent a proceeding,¹⁸⁵ media has a strong impact on the reasonableness test. CAS's use of media reports is documented in *Feyenoord v. UEFA* where, in proving the racist nature of the act, the panel also made reference to the way the media covered the news.¹⁸⁶

CAS also takes into account the stadium environment and the fans' attitude towards the opponent, including any general hostility towards opposing teams or fan base.¹⁸⁷ CAS ignores national court's jurisprudence in rejecting racist conduct based on using a different form of a slogan and states that this does not affect the discriminatory nature of the conduct in the world of

¹⁷⁷ *Id.* ¶ 32(3).

¹⁷⁸ *Id.* ¶ 49.

¹⁷⁹ *Id.* ¶ 58.

¹⁸⁰ *Id.* ¶ 59.

¹⁸¹ *Id.* ¶¶ 48, 64, 69, 71, 83, 90, 91.

¹⁸² *Id.* ¶ 70.

¹⁸³ *Id.* ¶ 71.

¹⁸⁴ *Dinamo v. UEFA*, *supra* note 40, ¶ 9.14.

¹⁸⁵ *Šimunič v. FIFA*, *supra* note 94, ¶ 83.

¹⁸⁶ *Feyenoord v. UEFA*, *supra* note 129, ¶ 29.

¹⁸⁷ *Id.*

sports.¹⁸⁸ They point out the evaluation should be on a case by case basis.¹⁸⁹

C. UNINTENTIONAL RACISM

CAS case law indicates that its panel's main focus is to identify the intentional nature of a person's behavior at the time of the alleged racist conduct. For example, in *Simonich*, CAS referred to the player's own statements when he said that he "cautiously" avoided using parts of the slogan associated with a fascist regime.¹⁹⁰ Based on this statement, the panel reasoned that the player was aware of the negative implications of his conduct.¹⁹¹ In addition, CAS interpreted the appellant's effort in detaching himself from the supporters' reaction as a sign of the appellant's knowledge about the discriminatory nature of his statements.¹⁹² In this context, the panel found that the appellant's general knowledge of the probable meaning of his words was as an indication of knowingly using racist slurs.¹⁹³

Whether the actor had enough time to ponder what he was going to do is another factor in determining intent. In *Simonich v. FIFA*, the panel noted that the forty-minute gap between qualifying for the World Cup and the player's conduct, in addition to the time waiting to find a microphone to address supporters,¹⁹⁴ was sufficient time for the player to think about his actions.¹⁹⁵ The Court interpreted it as "an indication of the intention of the player to plan the movement and then enforce it."¹⁹⁶

CAS jurisprudence's greatest development is the recognition of unintentional racism, where the perpetrator is subject to penalties even though the perpetrator is unaware of his or her misbehavior. This doctrine complies with Article 7(1) of the FIFA Disciplinary Code, which provides that all violations are punishable regardless of deliberation or negligence.¹⁹⁷ Once racist remarks are proven, it does not matter whether the perpetrator

¹⁸⁸ Šimunič v. FIFA, *supra* note 94, ¶ 77–78.

¹⁸⁹ *Id.* ¶ 83.

¹⁹⁰ *Id.* ¶ 106.

¹⁹¹ *Id.*

¹⁹² *Id.* ¶ 58.

¹⁹³ *Id.* ¶ 68.

¹⁹⁴ *Id.* ¶ 5.

¹⁹⁵ *Id.* ¶¶ 92, 120.

¹⁹⁶ *See id.* ¶ 59.

¹⁹⁷ FIFA DC, *supra* note 113, at art. 7(1).

intended to insult a particular person or group of people.¹⁹⁸ FIFA's handbook has considered unintentional racism when pointing out instances where the perpetrator is not aware of the effect of his conduct.¹⁹⁹ In *Feyenoord v. UEFA*, involving the incident of someone throwing an inflatable banana onto the pitch, the panel accepted the *reasonable possibility* that there was no discriminatory purpose.²⁰⁰ Yet, the panel also pointed out that this is an illustration of "*potentially unintentional racism*."²⁰¹ CAS acknowledges that this situation may rarely arise, but if it does, CAS can consider it as a mitigating factor if preventive measures for the future are adopted.²⁰²

D. STRICT LIABILITY FOR SUPPORTERS' CONDUCT

The lack of punishment for racial abuses in sports is a source of concern for the Special Rapporteur who has called for effective measures in national jurisdictions to combat discriminatory conduct.²⁰³ The principle of strict liability, and the definition of supporter, work together to avoid situations where no liability can be assigned and thus misconduct remains unpunished.

The strict liability doctrine is the intersection between the reasonable observer test, the definition of racism, and the definition of supporter. According to CAS jurisprudence, the term "supporter" is an open concept that is intentionally and wisely undefined.²⁰⁴ It must be assessed from the perspective of a reasonable and objective observer.²⁰⁵ In fact, applying this test is

¹⁹⁸ GNK Dinamo v. UEFA, *supra* note 40, ¶ 9.12.

¹⁹⁹ FIFA GOOD PRACTICES, *supra* note 96, 25.

²⁰⁰ Feyenoord v. UEFA, *supra* note 129, ¶ 77.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Ruteere, *supra* note 14, ¶ 62.

²⁰⁴ Fenerbahçe SK v. Union des Associations Européennes de Football (UEFA), CAS, 2013/A/3139, ¶ 64 (Dec 5, 2013) [hereinafter *Fenerbahçe v. UEFA*]; *see also* Feyenoord v. UEFA, *supra* note 129, ¶ 17.

²⁰⁵ Albania v. UEFA, *supra* note 125, ¶ 189; *see also* Feyenoord v. UEFA, *supra* note 129, ¶ 46 (The panel says: "The term 'supporter' is not defined. In particular, the Panel notes that it is not linked to race, nationality or the place of residence of the individual, nor is it linked to a contract which an individual has concluded with a national association or a club in purchasing a match ticket. The Panel has no doubt that it is UEFA's deliberate, and wise, policy not to attempt to provide a definition for 'supporter'. ... There is no UEFA provision that makes a distinction between 'official' and 'unofficial' supporters of a team. Nor could such a provision easily be drafted. UEFA could

the only manner in which CAS can attribute responsibility in a case of supporter misconduct.²⁰⁶

Identifying the perpetrators of misconduct can be a real challenge for match officials. This is especially true when 200-300 perpetrators are scattered in a section that contains 2,000 to 3,000 fans,²⁰⁷ or when a drone from outside the venue is the means of perpetrating the improper behavior.²⁰⁸ In *Albania v. UEFA*, a drone carried nationalistic Albanian symbols into the stadium.²⁰⁹ Efforts to remove the banners carried by the drones sparked reactions from the Albanian players who attempted to protect the banners.²¹⁰ The CAS panel assigned to review the incident concluded that defensive response of the Albanian players was grounds for attributing the drone to Albanian supporters.²¹¹ The panel further held that it was not necessary for the supporters to be in the stadium, or to be in sight;²¹² an association or a club becomes responsible for its supporters' misbehavior as long as the incident takes place at a match.²¹³

Once identified, the supporter's club or association is responsible for the supporter's misconduct. The principle of strict liability is the core concept of FIFA disciplinary Code with regard to spectators, which attributes the liability of supporters conduct to either or both the home or guest association or club, regardless of culpability.²¹⁴

Strict liability was challenged in the case of *Fenerbahçe*,²¹⁵ and also *Hungary v. FIFA*.²¹⁶ In *Hungary v. FIFA*, the Hungarian Football Federation, appealing a disciplinary

not be satisfied that its Disciplinary Regulations would ensure the responsibility of clubs for their supporters if such a distinction were made. The only way to ensure that responsibility is to leave the word 'supporters' undefined so that clubs know that the Disciplinary Regulations apply to, and they are responsible for, any individual whose behavior would lead a reasonable and objective observer to conclude that he or she was a supporter of that club. The behavior of individuals and their location in the stadium and its vicinity are important criteria for determining which team or club they support.”).

²⁰⁶ Feyenoord v. UEFA, *supra* note 129, ¶ 3.

²⁰⁷ Hungary v. FIFA, *supra* note 172, ¶ 33.

²⁰⁸ Albania v. UEFA, *supra* note 125, ¶ 13.

²⁰⁹ *Id.*

²¹⁰ *Id.* ¶ 15.

²¹¹ *Id.* ¶ 195.

²¹² Fenerbahçe v. UEFA, *supra* note 204, ¶ 44.

²¹³ *Football Ass'n of Alb. (FAA)*, CAS 2015/A/3874, ¶ 191.

²¹⁴ FIFA DC, *supra* note 113, at art. 67(1)(2).

²¹⁵ Fenerbahçe v. UEFA, *supra* note 204, ¶ 83.

²¹⁶ Hungary v. FIFA, *supra* note 172, ¶¶ 38, 44.

decision by FIFA, relied on the fundamental principle of ‘*nulla poena sine culpa*,’: denying responsibility in the absence of fault.²¹⁷ The Federation tried to blame (i) a “minority of trouble makers” unknown to the host,²¹⁸ and (ii) the police who, under Hungarian law, were responsible for the security of the match.²¹⁹ The Federation also argued that while it is possible to detect physical objects such as weapons or banners, political ideas cannot be detected by security checks.²²⁰ It further argued that this principle would unfairly influence the real fans and not the violators as it “is unlikely to deter a group of fascists who are not even [soccer] fans and no security system can prevent spontaneous outbursts of racism.”²²¹ The court used the same argument to support the principle of strict liability. It explained that accepting the appellant’s arguments would allow there to be no accountability, which undermines FIFA’s rules and regulations.²²²

FIFA, as the respondent, defended the deterrent effects of the “indirect sanction” and argued that blocking these punitive measures would deny FIFA the ability to appropriately address racist conduct on the stands, thus allowing the circle of violence by spectators to continue.²²³ The panel agreed with FIFA that the sanctions were necessary to address the seriousness of the offenses.²²⁴

“Impunity of racially motivated crimes in sport” is a substantial challenge,²²⁵ but such measures can help to appropriately address racist incidents while sending a message to violators about potential disciplinary actions. The main purpose of SGB’s disciplinary procedures is to prevent the violation of its rules and ensure respect for them by imposing sanctions on clubs or associations, thereby influencing fans’ behavior.²²⁶ It is important to interpret the rules according to the purpose of the rule

²¹⁷ *Id.* ¶ 44.

²¹⁸ *Id.*

²¹⁹ *Id.* ¶¶ 44, 48.

²²⁰ *Id.* ¶ 44.

²²¹ *Id.* ¶ 54.

²²² *Id.* ¶ 63.

²²³ *Id.* ¶ 62.

²²⁴ *Id.* ¶ 100.

²²⁵ H.R.C. Res. 13/27, *supra* note 42, at 3.

²²⁶ Hungary v. FIFA, *supra* note 172, at ¶ 90.

maker.²²⁷ CAS strongly affirms this approach²²⁸ as “one of the few legal tools” to stop improper spectator conduct.²²⁹

E. AGGRAVATING CIRCUMSTANCES

Whether a particular incident turns into a serious case, one requiring harsher sanctions, is an issue considered by CAS. SGB’s regulations do not provide an explanation for “serious” cases. The FIFA Disciplinary Code only points out the involvement of several persons in breaching a rule is an aggravating circumstance.²³⁰ Regardless of recidivism,²³¹ both FIFA²³² and UEFA DR²³³ determine whether a racist incident is “serious” on case-by-case basis, focusing on unique circumstances (i.e. aggravating circumstances) that might require harsher sanctions.²³⁴

CAS case law has determined a number of aggravating circumstances which helps clarify how “serious” cases should be distinguished from others. In *Simonis*, described above, CAS found an aggravating circumstance existed when the player involved fans in his racist conduct by inviting supporter to respond to his words.²³⁵ The panel also justified the imposition of harsher sanctions by noting the “time gap” between the end of the game, when the incident occurred, and the player’s other conduct— noting that it gave the player more time to think about what he was doing.²³⁶ The panel also noted that the player never publicly regretted what he did on the field in regard to his use of words associated with the Ustaše regime, which the court viewed as a sign of disrespect for the regime’s victims.²³⁷

²²⁷ GNK Dinamo v. UEFA, *supra* note 40, ¶ 9.11 (iii); *see also* Liao Hui v. International Weightlifting Federation (IWF), CAS 2011/A/2612, ¶ 107 (July 23, 2012).

²²⁸ Sport Lisboa e Benfica Futebol SAD v. UEFA & FC Porto Futebol SAD, CAS 2008/A/1583 & Vitória Sport Clube de Guimarães v. UEFA & FC Porto Futebol SAD, CAS 2008/A/1584, ¶ 42–44 (July 15, 2008).

²²⁹ Albania v. UEFA, *supra* note 125, ¶ 187.

²³⁰ FIFA DC, *supra* note 113, art. 58(1)(b).

²³¹ *Id.* art 40; UEFA DR, *supra* note 93, art. 19.

²³² FIFA DC, *supra* note 113, art. 58(2)(b).

²³³ UEFA DR, *supra* note 93, art. 14(4).

²³⁴ *See* FIFA DC, *supra* note 113, art. 58(2)(b); UEFA DR, *supra* note 93, art. 14(4).

²³⁵ Šimunič v. FIFA, *supra* note 94, ¶ 59.

²³⁶ *Id.* ¶ 92.

²³⁷ *Id.* ¶¶ 116, 120.

In *Albania v. UEFA*, a CAS panel affirmed that the use of intimidating chants calling for Albanians to be killed and slaughtered²³⁸ was an aggravating factor that contributed to the abandonment of the match.²³⁹ In addition, Physical violence by players and fans, described as act of “severe nature,”²⁴⁰ and using a drone to bring an illicit banner to the stadium were also considered aggravating factors.²⁴¹ The panel noted that while banners and misbehaving fans can be removed, the drone, a “sophisticated method of delivery”, might be used to carry explosive or other hazardous materials.²⁴²

Finally, a particularly aggravating factor was the reaction by security forces in the stadium, where one steward was seen attacking an Albanian player.²⁴³ Despite the presence of around 4000 police officers in the stadium no one was arrested, not even those fans who were on the pitch.²⁴⁴

IV. THE BIGGER PICTURE

Social phenomena cannot be observed in a vacuum. No societal aspect, including sports, is “isolated from the social, economic, political, and cultural context in which it is situated.”²⁴⁵ Sport is a fundamental cultural piece stretching beyond borders. For many people who have considered soccer an essential part of their life since childhood, soccer is not just about a goal, a victory or defeat, it is a part of their “social life,” mixed with all the things they have learned outside of soccer.²⁴⁶ In other words soccer goes hand in hand with social developments, as a “mirror of society.”²⁴⁷

SGBs have also recognized that racism and discrimination are social problems regularly demonstrated

²³⁸ *Albania v. UEFA*, *supra* note 125, ¶ 9.

²³⁹ *Id.* ¶ 243.

²⁴⁰ *Id.* ¶ 244.

²⁴¹ *Id.* ¶ 69.

²⁴² *Id.* ¶¶ 69, 206

²⁴³ *Id.* ¶ 18.

²⁴⁴ *Id.* ¶ 41.

²⁴⁵ GEORGE H. SAGE, INTRODUCTION TO DIVERSITY AND SOCIAL JUSTICE IN COLLEGE SPORTS 2 (Dana D. Brooks & Ronald C. Althouse eds., 2007).

²⁴⁶ FIFA GOOD PRACTICES, *supra* note 96, at 52.

²⁴⁷ H.R.C. Rep., *supra* note 13, ¶ 56.

through their sport.²⁴⁸ Indeed, hooliganism, racism, and violence in soccer,²⁴⁹ are only a few pieces of a bigger societal picture²⁵⁰ that encourages hatred and conflict.²⁵¹ The only way to rectify it is to build tolerance by addressing its roots, i.e. the “historical legacies and imbalances of racism.”²⁵²

As a part of the cultural climate, racism in soccer targets “vulnerable groups” and thus is just an illustration of the general trends in society. In fact, soccer is a survival channel for discriminatory patterns existing in the social structure,²⁵³ which exploit soccer’s ability to reach millions of people, in order to promote an alternative agenda.²⁵⁴ “Racism is not about objective characteristics, but is about relationships of domination and subordination, about hatred of the ‘Other’ in defense of ‘self’, perpetrated and apparently legitimized through images of the ‘Other’ as inferior, abhorrent, even sub-human.”²⁵⁵

Extremist groups, including neo-Nazis and skinhead groups, intervening in sports events remains a source of deep concern for the United Nations General Assembly.²⁵⁶ Some of these groups, like English Defense League, advocate against immigration, and are deeply rooted in soccer hooliganism.²⁵⁷ In Germany, such groups have tried to infiltrate sport clubs or establish their own sports clubs.²⁵⁸ Meanwhile, anti-Semites displaying neo-fascist symbols are challenging Eastern European stadiums.²⁵⁹ These actions only lead to more violence and conflict in society.²⁶⁰ Because of this, experts suggest greater transparency for fans in regions with discriminatory records.²⁶¹ The proceedings against UEFA and the Serbian Football Federation by Albania, where the historical Balkan conflict played a role in a

²⁴⁸ UEFA EXEC. COMM., DECLARATION AGAINST RACISM (Dec. 15, 2005) <http://www.uefa.org/newsfiles/379953.pdf>.

²⁴⁹ Watson, *supra* note 27, at 1105.

²⁵⁰ Ruteere, *supra* note 14, ¶ 14.

²⁵¹ Watson, *supra* note 27, at 1105.

²⁵² Ruteere, *supra* note 14, ¶ 14.

²⁵³ FARE GLOBAL GUIDE, *supra* note 10, at 5.

²⁵⁴ Diène, *supra* note 64, ¶ 25.

²⁵⁵ SANDRA FREDMAN, DISCRIMINATION LAW 51 (2d ed. 2011).

²⁵⁶ G.A. Res. 71/179, *supra* note 43, ¶ 24.

²⁵⁷ AMOS N. GUIORA, TOLERATING INTOLERANCE: THE PRICE OF PROTECTING EXTREMISM, 118 (2014).

²⁵⁸ FRA Report, *supra* note 15, at 31.

²⁵⁹ *Id.* at 32.

²⁶⁰ Watson, *supra* note 27, at 1058.

²⁶¹ FIFA GOOD PRACTICES, *supra* note 96, at 38.

stadium incident and the submissions of the parties,²⁶² is one example of how such conduct can have its roots in the political and social history of a community.

Therefore, racist behavior differs from one region to another, each creating unique sets of ever-changing symbols or chants or a combination of them.²⁶³ Thus, the first important step in the fight against racism is identifying the racist conduct, which requires experts familiar with the cultural context and language.²⁶⁴ Anti-racist organizations play a crucial role in the fight against racism by providing support to officials and working to educate and raise awareness in society.²⁶⁵

SGBs have properly identified and addressed the need to use cultural experts and have incorporated the cultural factor into their fight against racism by creating outside partnerships. The current FIFA Anti-Discrimination Monitoring System is a mechanism modeled after UEFA's cooperation with the Football Against Racism in Europe (FARE); an NGO active in the fight against racism, and particularly identifying cultural racist patterns.²⁶⁶ Greater awareness and reporting of racist incidents in soccer is the outcome of deeper cultural knowledge—a result of the partnerships between SGBs and relevant NGOs, like FARE.²⁶⁷

In this framework, FIFA and FARE identify soccer events where there is a high probability of racist behavior and monitor these events with “FIFA Anti-Discrimination Match Observers,” that FIFA and FARE jointly train.²⁶⁸ The observers create reports about any discriminatory conduct in the matches.²⁶⁹ The CAS panels give great weight to these official reports²⁷⁰ because the observer's comprehension of the incidents are more accurate compared to those who are not in the stadium.²⁷¹

²⁶² Albania v. UEFA, *supra* note 125, ¶ 141.

²⁶³ FIFA GOOD PRACTICES, *supra* note 96, at 41.

²⁶⁴ *Id.* at 42.

²⁶⁵ UEFA Resolution, *supra* note 87, ¶ 9.

²⁶⁶ FIFA GOOD PRACTICES, *supra* note 96, at 39.

²⁶⁷ FRA REPORT, *supra* note 15, at 33.

²⁶⁸ FIFA GOOD PRACTICES, *supra* note 96, at 39.

²⁶⁹ *Id.* For example the proceedings against Serbia and UEFA by Albania in CAS is a case that was first initiated based on a report by FARE in identifying racist conducts in a specific cultural context. Albania v. UEFA, *supra* note 125, ¶ 1.

²⁷⁰ Club Atlético Madrid SAD v. Union Européenne de Football Association, CAS, 2008/A/1688, ¶ 93 (Feb. 9, 2009).

²⁷¹ Albania v. UEFA, *supra* note 125, ¶ 216.

Another way SGBs can effectively reduce racial violence within their stadiums is by providing enhanced educational opportunities and opening dialogue between fans.²⁷² This view is not only shared by SGBs but also by the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD) and the Committee on the Elimination of Racial Discrimination²⁷³ ICEAFRD underlines the role of education and teaching in promoting tolerance, which has been further considered by the Committee on the Elimination of Racial Discrimination.²⁷⁴

The FIFA handbook on *Good Practice Guide on Diversity and Anti-Discrimination*, states: “[s]imply accepting the institutional view of [soccer] is not enough: players and other people in and around [soccer] must also be involved individually in the discussion so that solutions can be found.”²⁷⁵ Dialogue assists in a better understanding on both sides. For example, while some conduct might be offensive for a victim, the performer might not even be aware of the negative connotation of his behavior. If both sides could sit together to discuss how the victim suffered as the result of a specific behavior, a deeper understanding could emerge at the end.²⁷⁶

In some institutional aspects soccer is ahead of other sports in its attempts to tackle racism.²⁷⁷ However, sport governing bodies lack adequate means to educate fans,²⁷⁸ and that is why the FIFA Task Force Against Racism and Discrimination believes fighting discrimination and promoting diversity is a long-term process.²⁷⁹

However, there are several situations where SGBs can influence relevant cultural conditions. Soccer supporters in

²⁷² See generally Mesut Bulut & Mehmet Emin Bars, *The Role of Education as a Tool in Transmitting Cultural Stereotypes Words (Formal's): The Case of “Kerem and Asli” Story*, 3 INTL. J. OF HUMANITIES AND SOCIAL SCIENCE 57, 57–65 (2013). Education is one of the tools in the FIFA fight against racism. See FIFA GOOD PRACTICES, *supra* note 96, at 16.

²⁷³ INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, *SUPRA* NOTE 134, ART. 7.

²⁷⁴ U. N. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 35: Combating Racist Hate Speech*, U.N. Doc. CERD/C/GC/35, ¶ 8 (Sept. 26, 2013).

²⁷⁵ FIFA GOOD PRACTICES, *supra* note 96, at 19.

²⁷⁶ *Id.* at 27.

²⁷⁷ Morley, *supra* note 1.

²⁷⁸ FIFA GOOD PRACTICES, *supra* note 96, at 15.

²⁷⁹ *Id.* at 12.

Europe highlight the importance of “proactive involvement of supporters and encourage self-policing” in stadiums²⁸⁰ as a mechanism that allows spectators to voluntarily report racist incidents.²⁸¹ Programs that foster the inclusion of minority groups, like invitations to visit stadiums or free tickets to matches are also potentially helpful.²⁸²

Education and dialogue can turn the fans into a positive contribution.²⁸³ The FIFA handbook recommends interacting with fans to hear their voices and to understand their expectations through surveys, meetings, organizing a fan congress, or have their representatives involved in some decision-making process, especially those who are related to antidiscrimination.²⁸⁴

CONCLUSION

Fair play and good sportsmanship are pillars of sport spirit, and racism threatens these foundations; “sport has no place in it for racist conduct and acts.”²⁸⁵ Thus, eradicating racism from sports is an “urgent concern” underlined by international law and requires a joint endeavor by governments and international and national entities.²⁸⁶ However, sport governing bodies cannot be successful on their own. Therefore, “[i]t is the duty of States, regardless of their political, economic and cultural system, to promote and protect human rights and fundamental freedoms of all people.”²⁸⁷

Education and dialogue are key factors in realizing change. Success will only follow if there is collaboration between all levels,²⁸⁸ from education²⁸⁹ to administrative measures.²⁹⁰ Spectators along with players must be informed of the legal framework that applies to racist incidents,²⁹¹ and they should be

²⁸⁰ FRA Report, *supra* note 15, at 26.

²⁸¹ FIFA GOOD PRACTICES, *supra* note 96, at 34.

²⁸² *Id.* at 71.

²⁸³ *Id.* at 67–68.

²⁸⁴ *Id.* at 68.

²⁸⁵ Feyenord v. UEFA, *supra* note 129, at ¶ 80.

²⁸⁶ Ruteere, *supra* note 14, ¶ 22.

²⁸⁷ COTTER, *supra* note 52, at 12.

²⁸⁸ *Id.* at 13.

²⁸⁹ G.A. Res. 64/148, ¶ 51 (Dec. 18, 2009).

²⁹⁰ Watson, *supra* note 27, at 1071, 1104.

²⁹¹ FIFA GOOD PRACTICES, *supra* note 96, at 38.

well aware of relevant regulations in a clear and unambiguous way.²⁹² Fans should understand the far-reaching definition of “racist conduct” and the possibility of disciplinary proceedings before FGBs and CAS.²⁹³ Promoting the message of tolerance and non-discrimination through sport constitutes one of the important approaches in the prevention of racism, racial discrimination, xenophobia, and intolerance.²⁹⁴

In the end, skin color should be invisible under a jersey. Eradicating racism from soccer stadiums is an important task, one that can trigger change in societies by inspiring individuals to become interlocutors for positive change within their communities.

²⁹² *Id.* at 32.

²⁹³ *See supra* part III (A) and (B).

²⁹⁴ Ruteere, *supra* note 14, ¶ 40.