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## **International Sporting Mega-Events and Conditionality**

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Abstract:

This article examines host contracts for international sporting mega-events as a forum for conditionality in developing world infrastructure projects, with a focus on the Rio 2016 Olympics host agreement. With emerging economies hosting an ever-increasing range of sporting mega-events, the financial investments in these projects are becoming akin to those seen in more traditional mega-infrastructure initiatives. At the same time there is significant literature showing lacklustre economic returns on mega sporting event infrastructure that can lead to severe fiscal distress for host jurisdictions that may have less capacity to weather financial problems. Much of this stress can be attributed to the many conditions that come through host contracts. In addition to taking inventory of the host contract and how these conditions exacerbate the risks involved in hosting a sporting mega-event for a city and country, this work connects this discussion to a law and development literature existing outside of the sporting conversation.

## **Introduction**

Many have decried the significant negative impacts that conditions (or “conditionality”) can have on countries receiving development aid. Most commonly viewed through international institutions such as the World Bank, conditionality can also be seen in newer forms, including the spate of sporting mega-events that developing countries have hosted since 2007. While much has been written on the subject of conditionality in the international development and project finance context, the literature does not extend to the subject of international sporting mega-events. In starting to close the literature gap, this article argues that host city contracts (HCCs) for international sporting mega-events represent a new operational forum for conditionality in more affluent parts of the developing world, and like more traditional conditionality before it, burdens some host cities and countries with unnecessary financial and sovereignty costs.

After a review of mega-events and host contracts as well as a more detailed conceptualization of conditionality, the discussion moves to hosting trends, governance, and contract compliance. From here, conditionality is framed through a section-by-section analysis of the Rio 2016 HCC (International Olympic Committee 2009). This component of the paper has two primary aspects: first, the assessment and categorization of each provision in the HCC through five common forms of conditionality, and second, a more detailed analysis of particularly troublesome provisions in the context of Rio 2016. Finally, the paper undertakes a discussion on broader impacts of the HCC on a developing city (Rio) in a developing country (Brazil), as well as implications of the HCC for expanding our understanding of conditionality more generally.

## **Mega-Events and Host Contracts**

While there is a vibrant literature on mega-event impacts (e.g., Andranovich and Burbank 2011, Fourie and Santana-Gallego 2011, Gursoy *et al.* 2017, Maennig and Zimbalist 2012, Preuss 2015), host contracts are most often an ancillary consideration in the analysis of these events. In the instances where the host contract itself is the focus, the perspective has centred on allocative efficiencies (Borowick 2012) or tax law implications (Tetlak 2013). Borowick (2012) argues that despite uncertain enforcement remedies, the HCC contains relational and referential mechanisms that enable parties to overcome uncertainty and challenges. However this work does not address how these components apply to real world outcomes. Tetlak (2013) somewhat fills this void by applying analysis of HCC taxation provisions to London 2012, arguing that the nature of the HCC commitments oblige host country taxpayers to become the “unofficial sponsors” of the Olympics through a web of benefits that effectively place the International Olympic Committee (IOC) above the law (p. 103).

In addressing how the IOC may gain this preferential status, Hiller (2014) frames the Olympics as a longer term “civic project” for urban growth coalitions intended to catalyse a range of interests well-beyond the scope of sport. In turn, ascension to the HCC can be seen as a necessary trade-off for such an opportunity. Building upon this, Kassens-Noor and Lauermann (2017) highlight that the HCC locks in over-optimistic financial projections from the bid stage based upon the aspirations of a growth coalition that wants to present the prospective Games in best possible terms to win the bid. Stewart and Rayner (2016, p. 161) frame this as a conflict between a bid “sales document” that becomes a legal commitment through the HCC, which in turn can be seen as a root cause of cost overruns and financial stress. Gaffney (2013) makes similar arguments in terms of overpromising on sustainability commitments and identifying the

central issue of urban projects accompanying mega-events as their planning “outside the realm of sustainable development and democratic practice” (p. 3935).

Likewise, McGillivray and McPherson (2012) frame the HCC as exacerbating a “democratic deficit” between the local organizers, IOC, and governments, by ensuring the focus is on maximizing benefits for and from the brief event window (pp. 86-87). This benefit maximization can be seen through creating a commercial monopoly for the host parties, enshrined in intellectual property laws of the host country (Louw 2012). James and Osborn (2016) further argue that these intellectual property laws are not in response to typical policy objectives, but rather a result of HCC requirements. Through case studies of legal transplants, James and Osborn argue that the IOC is able to leverage hosting rights into transplanting legislation for its benefit without sufficient scrutiny. The authors see the success of the IOC with this leveraged transplant model as becoming a template to create norms for other sporting organizations.

Indeed, these legal transplants can be viewed as stemming from the Olympic Charter as a prospective transnational constitution in a non-state context (Duval 2018). With reference to Teubner’s framework of transnational law in a globalized era, Duval cautions that the non-state quasi-constitutional framework serves a “mega-commercial event obsessed with its own economic success and largely ignorant of its negative externalities” (p. 268).

This all connects well with Muller’s (2017) event seizure concept. Event seizure entails the host country being grasped by the growth coalition and organizers in three ways: through infrastructure investments for Games related projects being chosen over alternatives, financial responsibility for overruns and projects with little legacy value, and passing of legislation placing

“the event above the law” (2017, p. 1114). These lenses are a strong basis for understanding how the HCC can manifest as a forum for conditionality.

Other works have concerned the impact of mega-events on developing countries. These include geopolitical motivations for hosting (Cornelisen 2010, Dowse and Fletcher 2018), infrastructure impacts (Matheson 2012), and tourism (Giampicooli *et al.* 2015). There are also a number of country or city specific case studies, such as those dealing with events in Brazil (Baumann and Matheson 2018, Curi and Knijnik 2011, Gaffney 2010, Rolnik 2013, Zirin 2014) or South Africa (Gibson *et al.* 2014, Knott *et al.* 2013, Peeters *et al.* 2014, Swart and Bob 2012). Frequently these pieces reinforce the role of elite coalitions in gaining the wider event opportunity, as well as a range of deleterious financial and social impacts on hosts combined with lacking benefits. Each of these issues will be on display in this article’s discussion of Rio.

However, this paper aims to primarily address a gap at the intersection of two issues: host contracts and their operationalization as a forum in which conditionality more commonly found in developing world project finance, operates. While the literature has made the link between mega-events and impacts on developing countries, there are further connections to be made. In particular, examining how a mega-event can be understood in much the same way as foreign donor support for a major infrastructure project can highlight the structural challenges faced by emerging economy hosts and how the host contract itself frames these structural issues.

### **Explaining Conditionality**

In the law and development context, conditionality is typically associated with the imposition of conditions upon a recipient state or sub-federal jurisdiction in return for some financial benefit (Bull *et al.* 2006). Conditionality is often seen through international financial institutions (such as the International Monetary Fund for structural adjustment assistance, and the

World Bank for project finance) (2006), or the European Union for conditions imposed on countries wishing to attain membership (Schimmelfennig and Sedelmeier 2004).

Broadly categorized, conditionality can be conceived as five-fold: policy, process, outcome, fiduciary, and release (Bull *et al.* 2006, World Bank 2005). Policy conditionality entails requirements for certain policies to be implemented, while process conditionality focuses on the sequence and means of implementation. Outcome conditionality is concerned with measurables at certain threshold points, and the fiduciary form examines financial management and public accountability aspects. Finally, there is the concept of release conditionality. As conceived by the World Bank (2005, p. 4), this is where a recipient must meet conditions at certain dates to assure the release of funds.

World Bank conditionality is seen in the literature as reaching its peak in the 1980s (Hernandez 2017). A study of World Bank conditions on African projects found that most years in the decade saw an average of 20 to 35 conditions placed upon each project. Hernandez (2017, p. 533) argues that the number of conditions per project declined as certain nations shifted from creditor to donor status, although certain years in the early-mid 2000s neared the peaks of the 1980s, before reaching a steady low after 2008. However even where substantial conditionality is present, the conditions have not necessarily been implemented (Collier 1997, Killick 1996). Likewise, even where these violations were identified, they have not been consistently enforced (Bull *et al.* 2006, p. 7).

Conditionality has perhaps been most significantly criticised in two ways. First, conditions have been cited as having frequent and impactful deleterious economic side effects. Whether it is agriculture in Mali or Malawi, energy in Mozambique or Nicaragua, or banking in Zambia, financial assistance conditional on aggressive privatization and liberalization can in

certain circumstances have disastrous consequences for developing world governments and segments of their citizenry (Cabello *et al.* 2008, p. 22-30). Secondly, conditions restrict the national sovereignty of recipient states. This will in many instances undermine the democratic agency of the electorate, as well as the policy tools and frameworks available to the bureaucracy.

### **International Sporting Mega-Events, Host Trends, and Contract Compliance**

As increased criticism has accompanied a decline in conditionality on traditional infrastructure projects (such as irrigation, highways, water, and power plants), a new form of developing world project conditionality has arisen through the hosting of international sporting mega-events. The period since 2007 has seen the first sustained wave of still developing countries hosting the Olympics and World Cup, as well as a significant concentration of developing country hosts of second-tier mega events.

Two primary forces have led this shift. First, traditional hosts have recoiled from the massive financial costs and tenuous economic benefits associated with sporting mega-events, leading many potentially interested host cities in Europe and North America to abandon or not even embark upon mega-event bids in the first place (see Hiller and Wanner 2018). Where bids have initially advanced, many have subsequently ended through failed referenda (Maennig 2017).

Second, as some countries have emerged into an upper mid-tier of economic development, they have sought visible sporting mega-events as signals of their arrival or misguided attempts to boost a tourism industry (see Peeters *et al.* 2014, Stow and Bason 2019). In nations with newfound mega-event aspirations, growth coalitions can be driven by national politicians and elites aiming to demonstrate their brand or place on the international stage, while consolidating support for a domestic agenda. Internationally, sometimes the objective will be to

showcase a lesser known city in a country, a modern side of an existing hub city, increase a tourism profile, or more broadly make gains in “soft power” and influence (see Grix and Lee 2013). Domestically, mega-events can be a political impetus to speed up infrastructure investments that will have legacies beyond the event period (Muller 2017), or as opportunities for local and sub-federal governments to direct central government investment to particular regions.

This new tier of prospective hosts is perhaps epitomized by the “BRIC” countries of Brazil, Russia, India, and China, so dubbed and grouped due to their immense longer horizon economic potential (O’Neill 2001). South Africa in the 2000s may have also been considered in similar terms. All but India have hosted at least one of the three most significant sporting mega-events (the Summer Olympics, Winter Olympics, and the men’s FIFA World Cup) in the 2008 to 2022 period. Although the prestige (or propaganda) effect (see Brady 2009) has been most pronounced in authoritarian states, democracies such as South Africa and Brazil have hosted significant international sporting mega-events within the past decade. Others, including Peru, India, and Indonesia, have hosted the Pan-Am, Commonwealth, or Asian Games, which possess many elements in common with the Olympics. For instance, the 2010 Commonwealth Games in New Delhi included twice as many athletes as the 2018 Winter Olympics and came at an official cost of \$4.1 billion, some 16 times over budget (Magnay 2011).

Most international sporting mega-events are governed by international sporting organizations or federations, dominated in financial, competitive, and administrative heft by the developed world. Although these organizations do not have formal voting ratios based on financial commitment such as the World Bank or International Monetary Fund, informal mechanisms stemming from the founding of sporting federations have a similar effect (Gupta

2009, p. 1779). With the IOC for instance, voting members are disproportionately concentrated in Europe allowing those members to wield an effective veto (Poast 2007, p. 81), and lucrative broadcast revenues overwhelmingly come from the American and European markets (International Olympic Committee, 2020, p. 28).

When cities and countries agree to host mega-events, they enter into contracts with the relevant international sporting organization that detail obligations that can be classified much in the same way as traditional project conditionality terms: procedural, outcome, policy, and fiduciary. Indeed, HCCs can attach even more conditions than a World Bank project loan. Combined with the significant financial costs and questionable spinoff economic benefits inherent to these sporting mega-event ventures, the conditions built into HCCs further amplify already poor deals for countries that in many cases have less per-capita fiscal capacity to address substantial socio-economic development needs. When lofty and over optimistic promises are enshrined in a host contract, the host is being set-up for a suite of immediate and legacy risks that they may be less able to handle.

This paper frames the conditionality impact of HCCs through the HCC for the 2016 Summer Olympics in Rio de Janeiro, Brazil. While many HCCs provide a strong lens through which to consider conditionality in the international sporting mega-event context, the Summer Olympics is in many respects the premier sporting mega-event, with the most participating athletes and countries concentrated primarily in one city. Likewise, as the best known, and in many ways model agreement for sporting mega-events filtering down to other competitions, the IOC HCC is an impactful baseline vehicle for evaluating the considerable legal conditions imposed upon host cities and states. While deeper analysis of HCCs from other international

sporting mega-events and cities may be a pertinent and useful avenue of further investigation, this extent of analysis is beyond the limited scope of this paper.

Although Rio 2016 was not the first instance of the Summer Olympics being held in a less developed country, Rio is representative of the recent trend of mega-events being hosted in still developing locales and the Rio Olympics were less of a propaganda exercise than Beijing. The \$14 billion estimated financial cost of Rio 2016 also pales in comparison to the \$45 billion spent on Beijing 2008 (Dempsey and Matheson 2019, p. 5), though even this relatively smaller Games cost has placed substantial fiscal strain on each of the city and state of Rio de Janeiro, and the Brazilian national government (Worstall 2016).

## **Methods**

This article primarily relies upon a content analysis of the Rio 2016 HCC. All 79 provisions of the contract were analysed for their implications from a legal perspective. The author is a trained and practicing lawyer. From the initial analysis, each provision was categorized into one or more of five condition categories based upon the literature review: policy, process, outcome, fiduciary, and release conditionality.

A policy condition was deemed present if a provision required a national, sub-federal, or local government to implement a particular policy or law. A process condition is present if there are procedural restrictions on how the host parties get to a certain outcome. Likewise, an outcome condition is more expansively conceived as the need for a particular outcome to be met with less concern for how it is met. Finally, a fiduciary condition is found when there is a relationship of trust created concerning financial management whereby the host is obliged to act in a particular way as a fiduciary in administering the affairs or interests of the IOC. This is a

much narrower concept than process conditions, primarily focused on financial administration or high level management provisions.

To illustrate these coding concepts in context of doping controls in section 24, a policy condition would be for the host country to implement the World Anti-Doping Code and a process condition would be to follow the IOC Technical Manual on Medical Services. An outcome condition comes through the need for an accredited doping lab situated in the host city. The meeting of these policy, process, and outcome conditions are also a form of release conditionality, as these conditions need to be met in order to release IOC holdback payments to the host city. There is no deemed fiduciary condition relating to doping controls, but a good example of a fiduciary condition is in the financial reporting requirements in section 45 requiring independent auditor certification of financial statements.

Beyond coding provisions of the HCC as conditionality, the article evaluates a number of “key conditions.” These conditions are selected for their ability to reflect the five categories of conditionality explored in this paper, as well as their potential for impact on the host city and country in terms of the scope for policy control and financial effect. The article also analyses relevant provisions of Brazilian laws passed in response to certain key conditions. The laws are translated into English from Portuguese using Google Translate, and the interpretation is complemented by review of secondary commentary in English by Brazilian lawyers, as well as consultation with a Brazilian Portuguese translator and linguist.

### **Evaluating the Rio 2016 HCC**

The Rio 2016 HCC refers primarily to the commitments of three parties: the Host City itself, the host’s National Olympic Committee (NOC), and the local Organizing Committees for the Olympic Games (OCOG) (International Olympic Committee 2018). Collectively these three

parties can be referred to as the “host parties.” A NOC is a country’s official constituent to the IOC and is typically responsible for coordinating that country’s participation in the Olympics, while an OCOG is a purpose built organization tasked with planning and executing most aspects of the Games. The NOC and OCOG can have different public and private structures depending on the specific country. Interestingly, the host country is not a direct party to the contract, but is referenced throughout, and the HCC touches many areas traditionally under national jurisdiction. The host parties to the HCC are also responsible for all expenses related to the HCC unless otherwise stipulated (International Olympic Committee 2009, p. 60).

The Rio 2016 HCC has 79 provisions. A section by section content analysis of the Rio 2016 HCC reveals that 62 of these provisions can be considered conditions within the scope of this paper. Many of these identified sections have more sub-conditions that are not counted. These section-based conditions can also be classified through the five primary and overlapping forms of conditionality earlier discussed in this paper: process, policy, outcome, fiduciary, and release. Specifically, 26 conditions can be considered those of process, 25 policy, 37 outcome, 6 fiduciary, and 50 release. This analysis reveals that the IOC has a preference for process, policy, and outcome conditions backed by release conditions (the latter primarily coming in the later discussed retention and set-off provisions).

**Table 1 about here**

### **Key Conditions and Brazilian Games-Related Laws**

This section explains and evaluates particularly troublesome provisions as well as how these provisions pertain to the lenses of conditionality previously discussed. This subset of HCC provisions has again been selected based on their relation to conditionality and the establishment of mega-events as a distinct sub-form of policy conditionality, as well as their substantial potential for deleterious impacts on the host parties and country. As relevant, commentary about

the laws implemented as a result of these conditions and the impact of these conditions on Rio 2016 is provided.

In direct response to Rio HCC commitments, Brazil implemented several pieces of legislation complemented by presidentially issued “provisional measures” akin to American executive orders. These legislative efforts both built upon laws in place for the 2014 World Cup and pre-empted the awarding of the Games. For instance, Law 12.035 was passed in 2009 prior to Rio’s successful bid, with the intent of assuring the IOC that Brazil would comply with the HCC to be signed immediately following an award. The law addressed many aspects of the HCC, and included intellectual property provisions protecting Olympic symbols, suspension during the Games period of certain advertising contracts in federally owned spaces, as well as provision at no cost to the OCOG of security, health, customs, immigration, broadcast spectrum, visa requirements and fee waivers, and implementation of the World Anti-Doping Association (WADA) Code. There were also several specific tax laws and amendments passed between 2013 and 2016, including the exemption of certain imported goods as well as foreign flagged ships for accommodation use during the Games period.

#### *Joint and Several Liability*

There is joint and several liability between the Host City, the NOC, and the OCOG (2009, p. 10). This means that any of the three is responsible for all of the liability regardless of their relative share of liability. If the OCOG went bankrupt, the Host City or NOC are theoretically liable, although (as with World Bank conditions) there is questionable enforceability. This clause also brings a division of powers issue, as the host country is not a party and city powers are generally devolved from either unitary or sub-federal powers. Yet in Rio, the Host City and OCOG ran into serious financial shortfalls, which made this specific

protection for the IOC of little practical value once the financial capacity of these parties was exceeded. However this provision is in addition to any guarantees provided by other governmental authorities discussed next.

#### *Respect of Commitments Undertaken by Government*

The attack on internal federal or governance structures within the host country, and thus policy flexibility, is exacerbated through this requirement for the host parties to ensure the national government maintains their commitments, even if they are not formally jointly liable for the host parties. This section complements the joint and several liability clause for the host parties, with the intent to encapsulate the national government with a vastly superior capacity to pay for uncovered costs and issue debt. Likewise, the section is another enforceability red flag in that host parties typically do not have legal authority to bind superior levels of government. Instead, there may be more of a moral or image obligation in that national governments would lose credibility and international reputation if they walked away from backing Games commitments after a point in time where the Games could not be feasibly relocated.

In Rio, both the state government and OCOG ran out of money in advance of the Games, with the state government declaring itself bankrupt and unable to cover security costs (Worstell 2016). Although the state deficit was primarily prompted by plummeting oil revenues, massive transfers were required from the national government to pay for security and finish Games-related infrastructure projects (2016). While the IOC has the potential to step-in and cover additional expenses, there is no obligation to do so – instead the IOC can point to this clause. In fact, as of 2019, local media sources estimated that Rio 2016 was \$113 million in debt (Morgan 2019).

#### *Prior Agreements of No Effect*

Any sort of commercial or procurement contract related to the Games is deemed of no effect or invalid (International Olympic Committee 2009, p. 11). Generally (but subject to the laws of the jurisdiction) a previous contract can only be modified by the parties to the contract, so effectively this is a contract to induce breaches of other valid (under the laws of the host jurisdiction) contracts. Here there is potential tort liability for interference in contractual relations as well as simple breaches of contract, all of which the host parties would be jointly and severally liable for. This is a form of process and procedural conditionality.

The clause does have potential to limit front-end collusion between bid and host parties and can be waived with IOC approval, but at the same time precludes procurement from potentially being locked in at lower costs. In Rio, there were serious issues of bid rigging between construction companies as well as major cost overruns exacerbated by the hard deadline of the Games (Zimbalist 2017, pp. 48, 214-215). It is difficult however to tie these problems to the absence of effective prior agreement capacity – if anything, the barring of prior agreement in combination with transparency conditions may have protected against worse instances of corrupt practices.

### *Indemnification*

The inducement to breach valid contracts could also bring claims against the IOC (International Olympic Committee 2009, p. 12). However the indemnification and waiver section sees the host parties protect the IOC against such claims. Additionally, the indemnification protects the IOC and its related parties (officers, members, directors, employees, consultants, agents, contractors, and “other representatives”) from acts or omissions of the host parties and their own related parties. The IOC also has significant control on determining how a lawsuit from which it is indemnified is responded to by the Host City, NOC, and OCOG. In practice, this

means that if a party alleges harm from the Games, the IOC is able to avoid costs associated with lawsuits that may linger years after a Games. Again, this is a further form of process and policy conditionality.

With Rio 2016, the IOC has been able to skirt considerable litigation stemming from procurement construction, suppliers, and labour disputes. This litigation has extended well-beyond the Games, with a reported 258 civil lawsuits and 325 labour actions as of 2019 precluding the already massively indebted Rio OCOG from winding down (Morgan 2019).

While the IOC may have had liability in any number of lawsuits, as well as the capacity to pay out settlements, it has left liability to a bankrupt OCOG in a bankrupt state in a country reeling from economic and political crisis.

#### *Right to Work and Entry in the Host Country*

This provision obliges the Host City to ensure that certain persons and goods designated by the IOC can work, enter, and remain in the host country (International Olympic Committee 2009, p. 13-14). As a city will generally have little to no power to deal with immigration matters, this policy condition is a serious up-flowing infringement on state sovereignty and is seemingly made for the IOC's benefit. Although at some levels foreign technical expertise and experience make sense for smooth event functioning, it may limit higher level capacity-building opportunities for locals. Similarly, while broadly delegating national entry requirements to the wants of an international organization may be a temporary affront to sovereignty, it did impact the norms of Brazilian entry and work authorization. Specifically, Law 12.035 allowed for visa entry and work permit fee waiver more generally for the Rio Games period. Interestingly, a non-HCC derived policy of tourist visa waiver during the Games period for nationals of certain

countries was eventually permanently extended in the years following the Olympics to promote tourism.

### *Validity of Agreements*

Under this process and policy condition, the IOC can veto any Games-related contract made by the City, NOC, or OCOG (2009, p. 17). As with the “Prior Agreements of No Effect” clause, this limits the ability of local organizers to maximize revenue potential and minimize costs through procurement, while allowing the IOC to maintain full control over its brand. While this could in theory have positive impacts in terms of protecting against corruption, these provisions have not been utilized to that end.

In Rio, the most used construction contractor for venues and infrastructure, Odebrecht, was found to have paid bribes for the Line 4 metro project and other venues, with the company admitting to bribing the mayor of Rio personally with R\$15 million (Chade 2017). Indeed less than a year after the Olympics, contracts for six of twelve new stadiums were under corruption investigation for some combination of bribery, collusion, and price inflation (Chade 2017, Zimbalist 2017). Although perhaps the IOC could have played a greater positive oversight role, the allegations were not substantiated until a much wider Brazilian corruption probe in 2015 that eventually implicated several presidents.

### *Responsibility for Security, Health Care, and Doping Controls*

The host country, whose compliance is supposedly ensured by the host parties, is responsible for all security costs related to the Games, and the host parties are directly responsible for those related to health care and running a doping control operation (2009, p. 20-21). Security is especially burdensome, with recent Olympics seeing security expenses regularly run into the billions of dollars (Hopkins and Gibson 2012). This policy conditionality also

becomes an issue of state sovereignty as local police forces are inadequate to solely account for this sort of operation and national police and military will need to be involved. With the doping aspect, the state directed cheating scandal involving the Sochi 2014 doping control operation may prompt the IOC to change or withdraw this condition, or impose additional procedural and fiduciary conditions, which may further burden host parties (Ruiz and Schwirtz 2016).

For Rio however, security was the most significant issue and burden. Rio saw 23,000 soldiers among the 85,000 strong security forces deployed for the Games period (Kaiser and Jacobs 2016). Security costs also represented a financial shell game: while the Rio OCOG only carried \$27 million of security costs on its budget, governments were burdened with a further \$424 million in capital and \$507 million in operational security costs directly attributable to the Games, and a total of \$2.2 billion when indirect security costs were included (Zimbalist 2017, pp. 211-212, 216). In a city and country with mass poverty, money spent directly on securing a sporting event comes with even higher opportunity costs. Further, it is difficult to see legacy value in security spending, with crime and violence surging in the post-Games period alongside the economic downturn.

HCC requirements for doping controls also led to legislative creation of the Brazilian Authority for Doping Control (Decreto No. 7.630 2011). Through delegation of administrative powers, the Authority was responsible for implementing the WADA Code. Additionally a Sports Anti-Doping Tribunal was created to prosecute doping violations and implement penalties (Medida Provisoria No. 718 2016).

While doping control costs pale in comparison to security, Rio spent roughly \$60 million on creating a WADA compliant lab, only to see the lab suspended by WADA six weeks prior to the Games and reinstated a month later. The facility was a retrofitted university lab, meaning that

little additional non-sporting capacity could be derived from the investment. Although doping control is a necessity for the Games, an expensive control lab and operation has little value to a country like Brazil relative to its massive socio-economic challenges.

#### *No Modification of Olympic Venues*

The HCC does not permit modification of planned venues (capacity, contents, location, structure type, and completion schedule) without IOC approval (International Olympic Committee 2009, p. 29). Structurally, this protects the bid as promised where cities are encouraged to offer a sufficiently attractive bid to win, but then have little long term need for much of what was promised, from changes in bargaining power, government, or economic situation. This provision can be seen as outcome conditionality, although as with many international institutional conditions, there is an enforceability and incentive issue – the IOC is likely to prefer a non-compliant but functional stadium to a compliant but functionally incomplete one. Still, with venues being a major source of cost overrun and many having questionable post-Games value, the ability to modify venues to less costly and more valuable forms should at least be a request the IOC is inclined to approve.

Rio was no exception with major venue cost overruns and post-Games abandonment. Notable overruns included 132% for the aquatics centre, 60% for the velodrome, 62% for the tennis venue, and 166% for the village (Zimbalist 2017, p. 215). Six months after the Games, many venues were left in various states of abandonment, disrepair, and underutilization, from the overrun plagued pool to the looted Maracanã and largely vacant village (The Guardian 2017).

#### *Intellectual Property*

There are many burdensome conditions regarding intellectual property. First, the host parties have to assign any intellectual property rights that the IOC cannot itself hold or later

wishes to acquire. The Host City is required to hold these rights in a fiduciary capacity until assignment to the IOC at the end of the Games' calendar year (International Olympic Committee 2009, p. 29). Likewise, the host parties are responsible to ensure Olympic-related terms, symbols, and logos are protected in the host country. These protections extend to aggressive pursuit of so-called "ambush marketing" whereby brands competing with official sponsors will try to draw attention. Further, any proprietary rights in content created at the bid or Games stages by the host parties must be fully assigned to the IOC, at the cost of the host parties, again restricting policy means through which the hosts can recoup expenses while introducing a compliance cost. Finally, the host parties are obliged to enforce the IOC's intellectual property rights within the host country and pay for the IOC to enforce its rights in the rest of the world. This collection of provisions is one of the stronger instances of effectively forcing host countries to enact legislation for the benefit of the IOC, and provides significant support for the later discussed establishment of mega-events as a distinct sub-form of conditionality.

Brazil addressed these commitments with Law 13.284 amending aspects of Law 12.035. Specifically, this law brought in criminal law sanctions for unauthorized use of official symbols related to the Games, including any role in the supply and sales chain for fake Olympic goods, as well as for "ambush marketing." Ambush marketing was defined in two ways. First, "[t]o disclose brands, products or services, in order to achieve economic or advertising advantage, through direct or indirect association with the Games, without authorization from the organizing entities or from a person indicated by them, inducing third parties to believe that such brands, products or services are approved, authorized or endorsed by the organizing entities." Second, "[t]o exhibit brands, businesses, establishments, products or services or to carry out promotional activities, without authorization from the organizing entities or from the person indicated by

them, in any way attracting public attention in official places in order to obtain an economic or advertising advantage” (Lei No. 13.284 2016).

Although criminal law consequences for intellectual property standards are not uncommon in many countries, the criminalization of exhibiting a product or brand in indirect association with the event can be viewed as draconian. With sentences of either between three months and one year in prison, or a fine, the law seems targeted to punish both poor agents hired to implement an ambush campaign who cannot afford a fine, as well as scare those at a management level who can afford a fine with incarceration (Lei No. 13.284 2016). At the lower levels, this would preclude poorer locals – which in a developing country are from a reasonable opportunity to gain economic benefit from the Games.

#### *Financial Reporting*

Significant fiduciary (trust) conditions are added by financial reporting requirements (International Olympic Committee 2009, p. 37). These requirements include annual independently certified statements, regular management accounts, and all reports from internal auditors. The IOC also retains the right to audit whatever it wishes, whenever. While these conditions may have some financial cost, they are not necessarily unreasonably burdensome. The issue may be more that financial auditing is not primarily directed where it is most needed – namely procurement and construction contracts that are prone to cost inflation and corruption.

This was exactly the problem in Rio: the massive corruption in procurement contracts was outside the scope of the OCOG financial reporting and was not discovered until a wider national probe (see Zimbalist 2017, pp. 46-49). At the time of the allegations in 2015, the financial die was cast on venues and infrastructure with inflated bid-rigged contracts obtained through bribes. The imposition of financial reporting requirements may be positive conditions in

both the mega-event and wider development conditionality contexts – with each instance the key is framing the scope to ensure that the most dangerous aspects in cost and vulnerability are covered without undue compliance costs.

### *Ticket Distribution*

Large quantities of tickets must be reserved for the IOC, free of charge (2009, p. 38). This allocation is the reason that many supposedly sold out Olympic events appear at far less than capacity on television. For market tickets, the IOC has a veto over every procedural and policy aspect of ticket sales, again restricting the host parties from maximizing potential profits.

In Rio, available ticket sales were slow, possibly due to the national recession and Zika threat, with only 80% sold prior to the Games (Reuters 2016). The IOC allocation takes away premium product that could otherwise cover more host costs, as evidenced with the scalping scandal surrounding the Irish Olympic Committee at Rio where premium tickets reserved for official use were sold on the secondary market for millions.

### *Tax Responsibility*

The Host City and OCOG are responsible for all direct and indirect taxes owed by the IOC or IOC related parties (2009, p. 44). This protects the IOC from host governments imposing taxes on IOC activities that will not be borne by the OCOG. After the point where the IOC could not relocate a Games, absent this provision a new government could choose to tax any number of IOC functions. At the same time this condition prevents host cities and countries from having policy flexibility in raising taxes based upon the benefitting party pays principle.

In Brazil, two pieces of legislation pertained directly to IOC tax exemptions (Laws 12.780 and 13.161). The primary exemptions included income and withholding taxes, as well as importing materials. For Brazil, a country with high tariff walls in support of a traditional import

substitution development strategy, this would serve as a more significant policy change in regard to importing certain materials outside of the OCOG, if not a massive impact on revenues.

### *Technical Manuals*

The host parties must abide by the detailed technical conditions in no less than 30 specific manuals (2009, p. 59) often each over 100 pages. Most of these manuals are referred to in one or more other sections of the HCC. The manuals and these extensive procedural and policy conditions are for accommodation, accreditation, arrivals and departures, brand protection, ceremonies, city activities, communications, design standards, finance, food services, Games management, information management, marketing partners, media, medical, NOC services, OCOG marketing, Games impact, hospitality, the torch relay, the village, organizing an IOC session and related meetings, the Paralympics, IOC protocol, signage, sport, ticketing, transport, venues, and workforce. All of these specifications speak to control (often over the wider economic functioning of the Host City) and cost. Meeting these technical requirements can lead to material, personnel, and financial costs well-beyond what less strenuous technical requirements might incur.

The Rio OCOG for instance, had to control all billboards, transit, and airport advertising in the city for the Games period, ensure that street vendors (likely low income locals) were removed two weeks prior to the Games, and design venues creating segregation between IOC members and media. The IOC Technical Manual for Accommodation (2005, pp. 43-47) required IOC constituents had to be provided 1,800 four or five star hotel rooms at a below market rate, and a further 38,200 rooms were to be made available to non-IOC Games-related constituents. The latter had a substantial legacy impact in that a year after the Rio Games, the oversupply of

rooms and surging crime led to high vacancy rates, especially for hotels near the little used Olympic park (Zimbalist 2017, p. 222).

### *Enforcement*

As with many international institutional instances of conditionality, the issue of whether conditions can be realistically enforced is a pertinent one. This issue is magnified in the context of the Olympic Games and other sporting mega-events, insofar as there is a specific deadline of the event itself. Whereas traditional infrastructure projects can simply be delayed, the Olympics and other similar events effectively cannot. While this poses an enforcement problem for the IOC, in practice the hard deadline likely has a strong relationship to cost overruns significantly – with a hard deadline the only recourse is often to throw more money at the problem (Flyvbjerg *et al.* 2016, p. 14; Matheson 2012, p. 15). In part due to this reality, the Olympics are actually far more likely to go substantially over budget than traditional underperforming and over-budget infrastructure mega-projects (2016).

Although host parties do not have strong options to deal with overly optimistic initial projections, the IOC can partially mitigate its enforcement problem through a five percent holdback fund (International Olympic Committee 2009, p. 46). This means that five percent of the hundreds of millions of dollars the IOC will typically pay to the host parties through international revenue streams will be held back to deal with HCC non-compliance at the discretion of the IOC. If the holdback is insufficient, the IOC also has a general entitlement to set-off any damages from non-compliance beyond the retention amount (2009, pp. 46-47). With no reported instances of this fund being retained or the IOC exercising its set-off powers, the effect of these conditions is questionable, but at the same time this lack of use may demonstrate their effectiveness as a deterrent. Still, this is an overriding umbrella release condition.

The IOC also has a “nuclear” termination clause, which allows for the IOC to withdraw the Games if the host parties violate “any material obligation” pursuant to the HCC or the host country fails to meet the respect of commitments clause discussed earlier (2009, p. 57). Although this may serve as an additional deterrent, it would likely be just as damaging for the IOC to withdraw the Games at a late juncture. While a replacement host could potentially step-in with a few years of notice, the likelihood of material breach is seemingly far higher closer to the Games period (where a 30 day termination clause applies within 120 days of the opening ceremony). Thus this option may be more of a paper tiger, although one should note that a similar termination was made with Durban and the 2022 Commonwealth Games, albeit five years before the event (Gleeson 2017).

Finally, the dispute resolution clauses of the HCC are also loaded in favour of the Swiss-headquartered IOC. Namely, the HCC is exclusively governed by Swiss law and the forum is the Court of Arbitration for Sport in Lausanne, with the alternative forum being the ordinary Swiss courts in Lausanne (International Olympic Committee 2009, p. 63).

With Rio, the major problems with overruns and corruption likely occurred after the point of practical no return for the IOC. However since there are no explicit references to fraud or corruption in the HCC, Rio’s most glaring problems would not have constituted a material breach. Instead, any material breaches would have been found in non-compliance with other provisions, but were unlikely to be sufficient for the IOC to seriously consider moving the Games at a late juncture.

## **Discussion**

### **Impacts on Rio and Brazil**

From a web of process, policy, outcome, fiduciary, and release conditions drafted for the IOC's benefit, there are two primary categories of HCC impacts on Rio and Brazil: financial costs and sovereignty. Within financial costs, there can be a further subdivision between direct and opportunity costs. Starting with direct costs, the HCC requires the host parties to spend billions with little legacy benefit as a condition of hosting the Games. As noted, in Rio these costs include underutilized venues built to extensive technical standards, massive security spending, an anti-doping lab, requiring hotel availability well-beyond legacy need and price suppression for room rates, a poorly conceived real estate development for an Olympic Village, as well as intellectual property control and enforcement. While many of these costs are to some extent necessary to fulfil the Games, the financial risks of cost overrun are with the hosts and the benefits are substantially with the IOC. Although major cost saving measures were taken, the substitution of operations and venue construction was limited by deep technical requirements.

Where spending fails to generate an efficient legacy, then it comes with major opportunity costs. A still developing country with more scarce resources and fiscal capacity will see these opportunity costs compounded. For instance protecting the airspace of stadiums and other hard targets in affluent areas of Rio from terror groups does not seem to have much surplus value to Rio's major gang, drug, and petty crime problems. Insufficiently addressed crime problems are accompanied by the surplus new hotel rooms required by the HCC seeing lower than feasible occupancy rates (Zimbalist 2017, p. 222). Likewise, massive transportation infrastructure was constructed or redirected to serve venue and development clusters, instead of more pressing transit needs that could better facilitate economic growth (2017, p. 224). Much of this inefficient construction was further undermined by corruption in both directing funding to particular projects, as well as inflating costs beyond market price (2017, p. 48). Unlike with

wealthier Olympic hosts, recessionary and still developing Brazil does not have the fiscal capacity to also fund projects that may have been built in the no Games alternative, or even adequately fund existing program and social spending to alleviate mass poverty.

Opportunity cost also applies to how the Games may have been realized absent HCC conditions. Although in retrospect Brazil may have been better off without its 2010s mega-events, the HCC conditions have exacerbated matters through preventing a Games more appropriate for the local context. In particular, the HCC also limited the potential for revenue and economic maximization. On the revenue side, premium ticket allocations to the IOC, restraints on gambling, and price controls are of particular note. With economic maximization, restrictions on vendors and advertising (backed by criminal penalties), directly limit the scope of participation and benefit for lower income workers, which in a developing country are a larger proportion of the workforce than in most Olympic hosts.

Beyond cost, there have been significant, if temporary, infringements on sovereignty made necessary by a HCC that Brazil is not directly party to. These have included law and policy in the realms of taxation, immigration, work permission, security, and intellectual property. Additionally, criminal sanctions for activities in violation of these new Games laws represented a challenge to liberty for citizens engaging in activities that absent the Games would not likely face sanction. More remarkable is that these law and policy conditions have been to benefit an international sporting organization.

Yet for all the HCC conditions that have had a substantial impact on Rio and Brazil, the Rio HCC may be just as notable for what is absent. Namely, there are no provisions directly addressing human rights, corruption, and environmental protection, issues that are generally more pronounced in developing states with less capacity to address them. The lead up to the Rio

Games included thousands of forced evictions of poor residents from favelas, allegations of police brutality, and inadequate labour standards. As documented, many major Games venue and infrastructure projects were caught up in various forms of corruption. On the environmental front, Rio failed to meet its commitments to clean water and tree planting, and used environmentally sensitive land to build an unnecessary white elephant golf course (Zimbalist 2017, p. 194).

Perhaps in recognition of these failings, the IOC amended the 2024 HCC to embed provisions concerning discrimination, human rights, corruption, sustainability, and transparency (International Olympic Committee 2017). However critics have noted that the anti-corruption provisions fail on several fronts: an absence of independent monitoring and oversight, no enforcement of violations, and imprecise language leaving backdoors through which corruption can still easily be facilitated (McEntee 2017).

### **Mega-events as a Forum for Conditionality**

Much as governments in developing countries would agree to economic and political conditions in return for project finance opportunities, mega-events see international sporting organizations provide access to a development project with many of the above discussed conditions in the Rio HCC. However mega-events as a forum in which conditionality operates shift traditional conceptions in four key ways.

First, while some conditionally-financed development projects may have questionable economic impacts, mega-events as a class of development investments are likely to have among the worst outcomes from an economic and fiscal impact perspective. Second, this is an ever rarer means for traditional western powers to exert control and influence over emerging economies and alternative centres of influence such as China, Russia, and Middle Eastern states. However

where democracies are concerned, this control and imposition of major conditions comes tinged with elements of colonial legacy and eurocentrism.

Third, whereas traditional conditionality is almost always premised on agreements with nation states, a host contract emphasizes the role of cities and national sporting federations. This structure can cause significant shifts in the power and control dynamics between national, sub-federal, and local governments in the host country. Even where the host country is fully on board, the legal impact is felt through loss of agency, sovereignty, and fiscal control.

Although much of this structure is for the benefit of the IOC, the dynamic can advantage the host city relative to the host country, its province or state, and other cities. The HCC embeds a structure where the national government is devolving both formal control and fiscal capacity to a local government in ways that will not be seen absent the event. Likewise, in federal states, where a city will be reliant upon its state or province for funding and authority, the HCC has no formal role for states or provinces, although in many countries these levels of government will have fiscal responsibility for the debts of cities. Finally, the diversion of financial resources to a host city will privilege that city relative to other cities for scarce transfers, while senior levels of government are ultimately responsible for the financial risk should the city's resources become inadequate.

Fourth, some provisions requiring actual laws in favour of the IOC and its local delegates (the OCOG and NOC) go beyond traditional policy conditions in the infrastructure and development contexts and may establish a distinct sub-category of policy conditionality. While actors such as the IMF or World Bank require certain policies to be implemented by law as a condition of finance, these entities do not typically demand laws in favour of the international organization. The need to enact a diverse range of laws touching upon taxation, immigration,

security, and intellectual property, which are sometimes backed by criminal sanction for violations, are designed not only to create conditions in which the development project can succeed, but actually to foremost protect the interests of the IOC in ways that go beyond assisting the host or recipient. Where a developing country is concerned, these laws may be particularly stressful for the judiciary and administrative state, and come at a higher opportunity cost of more scarce resources in these realms.

Although many criticize the effects of traditional development conditions, such as the Washington Consensus, and may view their requirement as veiled imperialism or serving the interests of donor nations, HCC conditions can be seen as going a step further. Specifically, this can be found in three ways: the effective need stemming from HCC conditions for legislation of policy prioritizing the welfare of a non-state actor donor, the creation of legal structures in the recipient state (the OCOG) with privileged status to operationalize the protection of the donor non-state actor, and the ability of this non-state actor to control with effective veto power the delivery of the benefits.

In a developing country there is likely further potential to undermine less established or strong institutions through an almost parallel legal structure to benefit the IOC. Whereas the institutional capacity of traditional Games hosts with higher levels of socio-economic development may not be threatened or overwhelmed by Games legal structures, for a less developed country, not only are the Olympics a disproportionate financial burden, but also a disproportionate institutional burden. As with finances, there is a strong argument that scarce bureaucratic and administrative capacity can be better committed to other pressing needs in a still developing state.

This power dynamic hinging from HCC conditions can almost appear to be more of a rent-seeking exercise than one of bettering the recipient host's socio-economic prospects. In many respects this structure resembles so-called "tied aid" schemes forcing recipients to purchase products from donors as a condition of receiving assistance. Again this impact is compounded in the case of a developing country that has fewer fiscal means to compensate for financial failure. However tied aid for a traditional development infrastructure project such as a highway or dam will likely have some surplus benefit beyond a stadium or project primarily conceived for a two week event.

## **Conclusion**

This article has discussed the emergence of international sporting mega-events as a new aspect of traditional project conditionality imposed upon the developing world. Through an overview of trends in mega-events, as well as a section by section analysis of the Rio 2016 Host City Contract, this paper has identified how conditionality is operationalized in the sporting mega-event context. This analysis has also demonstrated how conditionality built into host contracts can exacerbate the already substantial deleterious financial and sovereignty impacts that hosting such events can have on cities and countries in the developing world beyond those felt by traditional hosts. From an overview of specific impacts on Rio and Brazil, this article also argues more broadly that mega-events can be viewed as a forum in which conditionality operates. In particular, the need for the host country to enact legislation in favour of the IOC may constitute a distinct sub-category of policy conditionality. Although this paper is limited in its scope, this research may next be extended into ascertaining the specific financial cost of each HCC provision as well as providing law reform and model contract solutions. In the meantime, the preceding analysis has demonstrated that there is significant room within which particularly

onerous conditions can be modified and allow for the developing world to hold sporting mega-events that can realistically possess net-beneficial impacts.

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Table 1.

<b>Summary of Conditions in the 2016 Rio HCC</b>		
<b>Condition type</b>	<b>Number of conditions</b>	<b>Section in Rio 2016 HCC</b>
All conditions	62	4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 79
Process	26	4, 10, 17, 24, 25, 28, 29, 31, 33, 34, 35, 36, 37, 38, 40, 45, 46, 47, 48, 49, 53, 55, 57, 58, 64, 66
Policy	25	4, 5, 8, 9, 11, 17, 18, 19, 24, 29, 31, 32, 34, 41, 42, 43, 46, 47, 50, 52, 56, 60, 63, 68, 79
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