

After Abu Dhabi: Restoring Integrity and Accountability in Formula 1

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INTRODUCTION

By any metric, Sir Lewis Hamilton is one of the greatest drivers in Formula 1 history. With seven World Championship titles, 103 race victories,¹ 104 pole positions, and 197 podiums² under his belt to date, he continues to perform after nearly two decades at the pinnacle of motorsport.³ For many fans, the exciting aspect of a sport comes from the spectacle of competition, where regular people can watch an elite group of athletes fight for the title under a set of strict guidelines that are designed to promote fairness and offer a chance for any competitor to win.⁴ This veneer of a level playing field is shattered, however, when the very people put in charge to ensure accountability are

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1. Gerald Donaldson, *Lewis Hamilton*, FORMULA 1, https://www.formula1.com/en/drivers/hall-of-fame/Lewis_Hamilton.html [https://perma.cc/SW3U-6C5B] [https://web.archive.org/web/20230920231333/https://www.formula1.com/en/drivers/hall-of-fame/Lewis_Hamilton.html] (last visited Oct. 21, 2023).

2. *Lewis Hamilton: Podium*, STATS F1, <https://www.statsf1.com/en/lewis-hamilton/podium.aspx> [https://perma.cc/ZML7-LMF5] [https://web.archive.org/web/20230920231655/https://www.statsf1.com/en/lewis-hamilton/podium.aspx] (last visited Oct. 21, 2023).

3. Lucy Rimmer, *Which F1 Records Does Lewis Hamilton Have? Most Wins, Poles and More*, AUTOSPORT (Apr. 25, 2022), <https://www.autosport.com/f1/news/which-f1-records-does-lewis-hamilton-have/6548878/> [https://perma.cc/UXH9-2VFPQ] [https://web.archive.org/web/20230920231919/https://www.autosport.com/f1/news/which-f1-records-does-lewis-hamilton-have/6548878/].

4. Eric Simons, *What Science Can Tell Sportswriters About Why We Love Sports*, COLUM. JOURNALISM REV. (Sept./Oct. 2014), https://archives.cjr.org/full_court_press/science_sportswriting.php [https://perma.cc/VLH7-4N6Z] [https://web.archive.org/web/20230920233141/https://archives.cjr.org/full_court_press/science_sportswriting.php].

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the ones who contravene the established rules. Formula 1, with its flashy cars and high-speed racing, is no stranger to excitement and controversies.⁵ But the 2021 season brought to light certain aspects of the sport's regulations and governance structure that many fans were unaware of, but which sit at the heart of the sport.⁶

The 2021 Abu Dhabi Grand Prix ended the 2021 Formula One World Championship in a dramatic and controversial fashion.⁷ Mercedes' Lewis Hamilton and Red Bull's Max Verstappen went into the final round with an equal number of points scored for the World Drivers' Championship.⁸ The race was decided in the final few laps after Williams' Nicholas Latifi crashed into the barriers with five laps remaining.⁹ After the safety car was deployed, Verstappen pitted for a fresh set of soft tyres,¹⁰ while Hamilton stayed out to maintain track position.¹¹ On the second-to-last lap, Race Director Michael Masi directed only the five lapped cars between Verstappen and Hamilton to unlap themselves, in direct contravention of established Fédération Internationale de l'Automobile (FIA) rules.¹² On the final lap, the green flag was deployed and the race resumed; Verstappen overtook Hamilton on his fresher tyres and maintained the lead, going on to win the Grand Prix and consequently the World Drivers' Championship.¹³ Mercedes initially filed protests for breach of sporting regulations, but eventually withdrew them, citing a loss of faith in racing and that what happened in Abu Dhabi was "not right."¹⁴

5. See, e.g., Marcus Simmons & Kevin Turner, *The Most Controversial F1 Deciders: 1990 Japan, 1994 Australia & More*, MOTORSPORT.COM (Dec. 11, 2021), <https://us.motorsport.com/fl/news/fl-title-most-controversial-deciders/6868141/> [https://perma.cc/AHC3-42N6] [https://web.archive.org/web/20230920233436/https://us.motorsport.com/fl/news/fl-title-most-controversial-deciders/6868141/].

6. *F1 Stewards: Who Are They, What Do They Do & How Are They Chosen?*, AUTOSPORT (Dec. 5, 2022), <https://www.autosport.com/fl/news/fl-stewards-who-are-they-what-do-they-do-how-are-they-chosen-6500572/6500572/> [https://perma.cc/UG5S-WY29] [https://web.archive.org/web/20230921180528/https://www.autosport.com/fl/news/fl-stewards-who-are-they-what-do-they-do-how-are-they-chosen-6500572/6500572/].

7. Connor McDonagh, *F1 Abu Dhabi 2021: Michael Masi, Lewis Hamilton, Max Verstappen - What Happened?*, CRASH (Nov. 14, 2022), <https://www.crash.net/fl/news/1009871/1/fl-abu-dhabi-2021-lewis-hamilton-max-verstappen-what-happened> [https://perma.cc/B6U3-CW4P] [https://web.archive.org/web/20230921180708/https://www.crash.net/fl/news/1009871/1/fl-abu-dhabi-2021-lewis-hamilton-max-verstappen-what-happened].

8. *Id.*

9. *Id.*

10. *Id.* "Tyre" is the standard spelling within the F1 sphere. See, e.g., *id.*

11. McDonagh, *supra* note 7.

12. *Id.*

13. The Athletic Staff, *Max Verstappen Beats Lewis Hamilton in 1-Lap Shootout To Win F1 Title in Abu Dhabi; Mercedes' Protests Dismissed*, THE ATHLETIC (Dec. 12, 2021), <https://theathletic.com/news/max-verstappen-beats-lewis-hamilton-in-1-lap-shootout-to-win-fl-title-in-abu-dhabi-mercedes-protests-dismissed/HDWQGpuv3TWL/> [https://perma.cc/ZDK3-8X66] [https://web.archive.org/web/20230921192522/https://theathletic.com/4184205/2021/12/12/max-verstappen-beats-lewis-hamilton-in-1-lap-shootout-to-win-fl-title-in-abu-dhabi-mercedes-protests-dismissed/].

14. Glynn A. Hill, *Mercedes Withdraws Its Appeal of Disputed Formula One Season Finale*, WASH. POST (Dec. 16, 2021), <https://www.washingtonpost.com/sports/2021/12/16/mercedes-withdraws-appeal-formula-one/> [https://perma.cc/KSS8-VWH6]

This Note will clarify the problems with the current self-governing system utilized by FIA by examining the level of external versus internal decision-making and accountability systems, including the current judicial remedies offered by FIA. I will specifically examine the substantive discretion accorded to the Race Director and stewards to dictate the events of each Grand Prix, and what avenues are available to drivers and teams when a dispute arises that involves actions by the stewards. Namely, I will address the inadequacies of an organization attempting to police itself using its own appeals system. I will compare the governing structure and dispute resolution mechanisms used by FIA with the structures used by Major League Baseball (MLB) and the Fédération Internationale de Football Association (FIFA). I will then offer three potential methods of introducing external accountability to FIA—the Court of Arbitration for Sport (CAS) arbitration, MLB arbitration, or civil justice—and ultimately recommend CAS arbitration to FIA for adoption.

I. BACKGROUND

A. FIA AND ITS GOVERNING STRUCTURE

FIA, the Fédération Internationale de l'Automobile, is the governing body for world motorsport and the federation of the world's leading motoring organizations.¹⁵ Since 1904, it has brought together 244 international motoring and sporting organizations from 146 countries on five continents, including Formula 1, the highest class of international racing for open-wheel, single-seater formula racing cars.¹⁶ FIA promotes motorsports, works across three areas of activity (sport, campaigns, and mobility), and licenses and sanctions Formula 1 and other motor racing competitions.¹⁷ The organization's duties include reviewing, enacting, and enforcing sporting rules; promoting accessible, sustainable, and safe mobility for all; taking executive decisions; and resolving disputes.¹⁸

The structure of FIA is, per its own website, similar to that of a nation state, with its own executive, legislative, and judicial branches.¹⁹ Its government consists of, among other organs, a President, General Assembly, Senate, various Committees and

[<https://web.archive.org/web/20231106211429/https://www.washingtonpost.com/sports/2021/12/16/mercedes-withdraws-appeal-formula-one/>].

15. Fédération Internationale de l'Automobile [hereinafter FIA] Statutes art. 1, § 1.1 (Jan. 1, 2021), https://www.fia.com/sites/default/files/2021_fia_statutes_fr-en.pdf [<https://perma.cc/H45G-V9QZ>] [https://web.archive.org/web/20230922174438/https://www.fia.com/sites/default/files/2021_fia_statutes_fr-en.pdf].

16. *Id.* art. 1, § 1.1; *id.* art. 4, § 4.1.

17. *Organisation*, FIA, <https://www.fia.com/organisation> [<https://perma.cc/ZXX9-76LT>] [<https://web.archive.org/web/20230922174804/https://www.fia.com/organisation>] (last visited Oct. 21, 2023).

18. *See* FIA Statutes art. 2, §§ 2.1–2.9 (Jan. 1, 2021).

19. *Governance*, FIA, <https://www.fia.com/governance> [<https://perma.cc/74S2-N8RF>] [<https://web.archive.org/web/20230922175100/https://www.fia.com/governance>] (last visited Oct. 21, 2023).

Commissions, World Motor Sport Council, International Tribunal (IT), and International Court of Appeal (ICA).²⁰ The IT hears all disciplinary matters in the first instance, except for anti-doping and financial regulations cases, which go to specialized courts, and can impose sanctions.²¹ The ICA enjoys broad authority to judge any disputes arising from the application of the FIA Statutes, the Statutes of the body governed by Swiss law, the International Sporting Code (ISC), and generally the rules and regulations of FIA; settle disputes related to FIA activities; and hear litigation submitted to it by the President of FIA.²²

Each year, FIA adopts the ISC, a set of rules which are valid for all auto racing events that it governs.²³ Under the ISC, FIA is the “sole international sporting authority entitled to make and enforce regulations based on the fundamental principles of safety and sporting fairness, for encouragement and control of automobile competitions, and to organize FIA International Championships.”²⁴ FIA recognizes a self-contained system of rule enforcement.

To the fullest extent permitted by applicable law, neither the FIA nor any of its officers, agents, employees, directors or officials shall be liable to any other party for any claim, cost, damage or loss resulting from any action, decision or omission by the FIA and/or its officers, agents, employees, directors or officials in connection with their duties, except for willful misconduct or fraud.²⁵

FIA is also the final international court of appeal for the settlement of disputes arising from these competitions.²⁶

B. STRUCTURE OF FORMULA 1

Formula 1 is the highest level of motorsport competition.²⁷ Ten teams each build their own open-wheel, single-seater cars, which are piloted by two drivers per team for a total of twenty drivers on the grid.²⁸ The teams compete for points during every

20. See FIA Statutes art. 7, § 7.1 (Jan. 1, 2021).

21. See *id.* art. 25, §§ 25.1–25.3.

22. See *id.* art. 26, §§ 26.1–26.2.

23. FIA Int'l Sporting Code (Jan. 1, 2021), https://www.fia.com/sites/default/files/2021_international_sporting_code_fr-en_clean_18.01.2021_0.pdf [https://perma.cc/62R7-NUWS] [https://web.archive.org/web/20230923001423/https://www.fia.com/sites/default/files/2021_international_sporting_code_fr-en_clean_18.01.2021_0.pdf].

24. *Id.* art. 1, § 1.1.1.

25. *Id.* art. 1, § 1.1.3.

26. *Id.* art. 1, § 1.1.2.

27. 2021 FIA Formula One World Championship, FIA, <https://www.fia.com/events/fia-formula-one-world-championship/season-2021/2021-fia-formula-one-world-championship> [https://perma.cc/J4LH-FKAB] [https://web.archive.org/web/20230922175642/https://www.fia.com/events/fia-formula-one-world-championship/season-2021/2021-fia-formula-one-world-championship] (last visited Oct. 21, 2023).

28. Sporting News, *Formula 1 Beginners' Guide: Scoring System, How F1 Sprint Works, Salaries, Pit Stop Rules & More*, THE SPORTING NEWS (July 10, 2022), <https://www.sportingnews.com/us/f1-world-championship/news/formula-1-beginners-guide-scoring-system-rules/dwtlsqkyd9g0eefqpf6kpeqp> [https://perma.cc/MEY3-SL5U]

Grand Prix race, held at street circuits and racetracks around the world.²⁹ The driver who accrues the most points at the end of the season is crowned the World Driver Champion (WDC),³⁰ and the team which accrues the most points wins the World Constructor's Champion (WCC).³¹ During each Grand Prix, only the top ten drivers receive points: 1st (25), 2nd (18), 3rd (15), 4th (12), 5th (10), 6th (8), 7th (6), 8th (4), 9th (2), and 10th (1), with an additional point given to the driver setting the fastest lap of the race, as long as that driver finishes within the top ten.³² The 2021 championship season consisted of twenty-two Grands Prix in total.³³ With this in mind, we now turn to discuss the event that precipitated the need for this update to the FIA rules.

C. ABU DHABI 2021

1. On-Track Events

Going into the Abu Dhabi Grand Prix on December 12, 2021, the last scheduled race of the season, both Hamilton and Verstappen had 369.5 points, which meant this final race would decide both the WDC and WCC.³⁴ Verstappen started on pole position, but Hamilton led most of the fifty-eight-lap race.³⁵ With five laps to go, Williams' Nicholas Latifi crashed into the barriers, which brought out the safety car while the track was cleared of debris by race marshals.³⁶ Under the safety car, the speed of cars on the track is limited so that the marshals can work safely, resulting in the cars bunching up behind

[<https://web.archive.org/web/20230922180054/https://www.sportingnews.com/us/motorsport/news/formula-1-beginners-guide-scoring-system-rules/dwrlsqkyd9g0eefqpf6kpeqp>].

29. *Id.*

30. Formula One Sporting Reguls. art. 6, § 6.1 (Dec. 8, 2021), https://www.fia.com/sites/default/files/2021_formula_1_sporting_regulations_-_iss_13_-_2021-12-08.pdf [<https://perma.cc/Y39F-P25Z>]

[https://web.archive.org/web/20230922180401/https://www.fia.com/sites/default/files/2021_formula_1_sporting_regulations_-_iss_13_-_2021-12-08.pdf].

31. *Id.* art. 6, § 6.2.

32. *Id.* art. 6, § 6.4.

33. 2021 FIA Formula One World Championship, FORMULA 1, <https://www.formula1.com/en/racing/2021.html> [<https://perma.cc/K548-4CC4>]

[<https://web.archive.org/web/20230925003834/https://www.formula1.com/en/racing/2021.html>] (last visited Oct. 21, 2023).

34. *Max Verstappen vs Lewis Hamilton: How Title Fight Swung and Was Ultimately Won in an Epic 2021 F1 Season*, SKY SPORTS (Dec. 31, 2021), <https://www.skysports.com/f1/news/12433/12492630/max-verstappen-vs-lewis-hamilton-how-title-fight-sprung-and-was-ultimately-won-in-an-epic-2021-f1-season> [<https://perma.cc/ZC2A-9RB6>]

[<https://web.archive.org/web/20230925004617/https://www.skysports.com/f1/news/12433/12492630/max-verstappen-vs-lewis-hamilton-how-title-fight-sprung-and-was-ultimately-won-in-an-epic-2021-f1-season>].

35. Reuters Staff, *Motor Racing – Timeline of Season Ending Abu Dhabi Grand Prix*, REUTERS (Dec. 12, 2021), <https://www.reuters.com/article/uk-motor-f1-abudhabi-timeline-of-season-ending-abu-dhabi-grand-prix-idUKKBN2IR0BU> [<https://perma.cc/UV3M-QCV8>]

[<https://web.archive.org/web/20230925005102/https://www.reuters.com/article/uk-motor-f1-abudhabi-timeline-of-season-ending-abu-dhabi-grand-prix-idUKKBN2IR0BU>].

36. *Id.*

the safety car in a line in the order they are out on track, regardless of whether they have been lapped or not.³⁷ Drivers are not permitted to overtake the safety car until the signal is given for the lapped cars to overtake.³⁸

Hamilton stayed out to not lose track position, since he was worried that he would not be able to reclaim his lead position if the race ended under the safety car,³⁹ while Verstappen pitted for a fresh set of soft tyres.⁴⁰ After pitting, Verstappen retained second place with five lapped cars remaining between him and Hamilton, and three additional lapped cars behind Verstappen.⁴¹ Race control initially issued a message that lapped cars would not be permitted to overtake the safety car.⁴² With two laps to go, Race Director Michael Masi permitted only the five cars between Verstappen and Hamilton to unlap themselves, meaning they would move past Hamilton and clear the way for Verstappen to attempt to catch up to Hamilton once the safety car period was finished.⁴³ On the last lap, green flag racing conditions were permitted, and Verstappen overtook Hamilton for the lead, which he maintained until the end, ensuring that Verstappen came away with the WDC.⁴⁴

2. Post-Race Protests

Immediately after the conclusion of the race, Mercedes filed two notices of protest pursuant to Article 17 (Protest and Appeals) of the 2021 F1 Sporting Regulations, which governs the fees associated with protests and what types of appeals are allowed,⁴⁵ and Articles 13.1 (Right to Protest) and 13.5 (To Whom Addressed) of the 2021 ISC, which further clarifies the procedures for filing a protest.⁴⁶ The first protest alleged a breach of Article 48.8 of the F1 Sporting Regulations, which lay out the exceptions to prohibitions on overtaking when the safety car is present.⁴⁷ Mercedes alleged that

37. Formula One Sporting Reguls. art. 48, § 48.7 (Dec. 8, 2021).

38. *Id.* art. 48, § 48.8.

39. *Id.* art. 51, § 51.13.

40. Reuters Staff, *supra* note 35.

41. Joe Rivera, *Why Max Verstappen's Last-Lap Win over Lewis Hamilton at 2021 Abu Dhabi Grand Prix Was So Controversial*, THE SPORTING NEWS (Dec. 13, 2021), <https://www.sportingnews.com/us/athletics/news/max-verstappen-lewis-hamilton-last-lap-controversy/140ggqhx8eu481qf9dejfl2czl> [https://perma.cc/6SP9-C9WA] [https://web.archive.org/web/20231106213126/https://www.sportingnews.com/us/athletics/news/max-verstappen-lewis-hamilton-last-lap-controversy/140ggqhx8eu481qf9dejfl2czl].

42. McDonagh, *supra* note 7.

43. *Id.*

44. The Athletic Staff, *supra* note 13.

45. Formula One Sporting Reguls. art. 17, §§ 17.1–17.3 (Dec. 8, 2021).

46. FIA Int'l Sporting Code art. 13, §§ 13.1, 13.5 (Jan. 1, 2021).

47. GARRY CONNELLY ET AL., FIA, DECISION – MERCEDES PROTEST ART. 48.8 (Dec. 12, 2021), <https://www.fia.com/sites/default/files/decision-document/2021%20Abu%20Dhabi%20Grand%20Prix%20-%20Decision%20-%20Mercedes%20Protest%20Art.%2048.8.pdf> [https://perma.cc/ND47-NUZB] [https://web.archive.org/web/20230925014754/https://www.fia.com/sites/default/files/decision-document/2021%20Abu%20Dhabi%20Grand%20Prix%20-%20Decision%20-%20Mercedes%20Protest%20Art.%2048.8.pdf].

Verstappen overtook Hamilton during the safety car period, which is not permitted. The second protest alleged a breach of Article 48.12 of the F1 Sporting Regulations and sought an amendment to the Race Classification.⁴⁸ Per the regulations, once the message that “LAPPED CARS MAY NOW OVERTAKE” has been sent, all lapped cars must pass the cars on the lead lap and safety cars, not just the cars between the race leaders.⁴⁹

Team representatives for Mercedes and Red Bull were summoned for a hearing. In answer to the first protest, the stewards issued Document 57, determining that while Verstappen did move ahead of Hamilton under the safety car for a short period of time, Verstappen moved back behind Hamilton before the safety car period ended and dismissed the complaint.⁵⁰ For the second protest, the stewards issued Document 58, claiming that Article 48.13, which allows the Race Director to control the use of the safety car, overrides Article 48.12—and further, it is “highly desirable” for races to end under green racing conditions rather than under a safety car.⁵¹ The stewards then dismissed the second complaint. After the hearings, Mercedes retained a right of appeal for both complaints in accordance with Article 15 of the FIA International Sporting Code and Article 10 of the FIA Judicial and Disciplinary Rules, and the team notified the stewards in writing of its intention to appeal to the FIA International Court of Appeal.⁵²

A few days after the race on December 15, 2021, FIA released a statement regarding the events of the race, claiming that the fallout is “currently tarnishing the image” of the Formula 1 Championship, and that the events have “generated significant misunderstanding and reactions from Formula 1 teams, drivers and fans,” but that FIA would be producing a “detailed analysis and clarification exercise for the future.”⁵³ Notably, the statement did not include any admissions of wrongdoing or even mention Race Director Michael Masi by name.

48. GARRY CONNELLY ET AL., FIA, DECISION – MERCEDES PROTEST ART. 48.12 (Dec. 12, 2021), <https://www.fia.com/sites/default/files/decision-document/2021%20Abu%20Dhabi%20Grand%20Prix%20-%20Decision%20-%20Mercedes%20Protest%20Art.%2048.12.pdf> [https://perma.cc/U4KW-DD4F] [https://web.archive.org/web/20231021173953/https://www.fia.com/sites/default/files/decision-document/2021%20Abu%20Dhabi%20Grand%20Prix%20-%20Decision%20-%20Mercedes%20Protest%20Art.%2048.12.pdf].

49. Formula One Sporting Reguls. art. 48, § 48.12 (Dec. 8, 2021).

50. CONNELLY ET AL., *supra* note 47.

51. CONNELLY ET AL., *supra* note 48.

52. The Athletic Staff, *F1 Live News: Mercedes Won't Appeal Abu Dhabi Result, Will Push for Changes; Verstappen Remains F1 Champion; Hamilton's F1 Future Questioned*, THE ATHLETIC (Dec. 16, 2021, 9:56 AM), <https://theathletic.com/live-blogs/abu-dhabi-grand-prix-fl-championship-lewis-hamilton-and-max-verstappen/g6d00HlceqOJ/> [https://perma.cc/PAJ7-9R5X] [https://web.archive.org/web/20231121165758/https://theathletic.com/live-blogs/abu-dhabi-grand-prix-fl-championship-lewis-hamilton-and-max-verstappen/g6d00HlceqOJ/].

53. *Statement of the FIA World Motorsport Council*, FIA (Dec. 15, 2021), <https://www.fia.com/news/statement-fia-world-motor-sport-council> [https://perma.cc/25V8-V8VZ] [https://web.archive.org/web/20230925022510/https://www.fia.com/news/statement-fia-world-motor-sport-council].

On December 16, 2021, the last day to file an appeal, Mercedes publicly confirmed that it was withdrawing the appeal, and welcomed the commission that FIA created to analyze what happened during the race and work to ensure that a similar situation would not happen in the future.⁵⁴ Fan reaction to the withdrawal of the appeal was mixed,⁵⁵ with some feeling that Mercedes did not fight hard enough for what they perceived to be a robbery of Hamilton's eighth Championship title. But in interviews after the fact, Mercedes team principal Toto Wolff addressed why the team made the decision to withdraw, stating

[W]e believe we had a very strong case, and if you look at it from the legal side, if it would have been judged in a regular court you could almost guarantee that we would have won. But the problem with the ICA is the way it is structured. The FIA can't really mark their own homework. And there is a difference between being right, and obtaining justice.⁵⁶

He reiterated his distrust of the remedial abilities of the FIA, stating "at the moment, we are set up in terms of our governance to end up in a situation that would have given us remedy, that would have reinstalled the result that was taken away from Lewis before the last lap of the race."⁵⁷ It is precisely these concerns that strike at the heart of what made the situation at Abu Dhabi possible, and why external accountability is needed at FIA.

3. FIA Commission Analysis

In March 2022, just prior to the start of the 2022 season, FIA released an executive summary report to the World Motor Sport Council for the purposes of drawing lessons from the events at Abu Dhabi and providing clarity moving forward.⁵⁸ In the report, FIA emphasized four areas—(1) the "multiple roles and responsibilities of the Race Director"; (2) the propriety of publicized radio communications between teams and the Race Director; (3) safety car unlapping procedures; and (4) the structure of the FIA race management team—for clarification and analysis and issued recommendations to

54. Mercedes-AMG PETRONAS F1 Team (@MercedesAMGF1), TWITTER (Dec. 16, 2021, 5:00 AM), <https://twitter.com/MercedesAMGF1/status/1471419870680125441> [<https://perma.cc/ECQ4-BVXS>] [<https://web.archive.org/web/20231021174945/https://twitter.com/MercedesAMGF1/status/1471419870680125441>].

55. *Id.* Comments and quote tweets on the Mercedes Twitter statement showcase varied opinions among fans.

56. Adam Cooper, *Why Mercedes Chose Not To Pursue Its Abu Dhabi F1 Appeal*, MOTORSPORT.COM (Dec. 19, 2021), <https://us.motorsport.com/f1/news/why-mercedes-chose-not-to-pursue-its-abu-dhabi-f1-appeal/6892802/> [<https://perma.cc/LY7R-Y9K6>] [<https://web.archive.org/web/20231021175326/https://us.motorsport.com/f1/news/why-mercedes-chose-not-to-pursue-its-abu-dhabi-f1-appeal/6892802/>].

57. *Id.*

58. FIA, 2021 F1 ABU DHABI GRAND PRIX - REPORT TO THE WORLD MOTOR SPORT COUNCIL (Mar. 19, 2022), <https://www.fia.com/2021-f1-abu-dhabi-grand-prix-report-world-motor-sport-council-19-march-2022> [<https://perma.cc/XD6A-HQ6G>] [<https://web.archive.org/web/20230925024514/https://www.fia.com/2021-f1-abu-dhabi-grand-prix-report-world-motor-sport-council-19-march-2022>].

address each of these concerns.⁵⁹ First, the creation of a Virtual Race Control Room, similar to the Virtual Assistant Referee used in football, to assist the Race Director in making decisions during the race.⁶⁰ Second, to no longer broadcast direct radio communications during the race.⁶¹ Third, to reassess safety car unlapping procedures prior to the start of the 2022 season.⁶² And finally, to implement a new race management team, where two individuals will act alternatively as the Race Director, assisted by a senior advisor.⁶³

In addition to the specific recommendations, FIA stated that a new F1 Sporting Director and additional senior regulatory legal counsel would be recruited.⁶⁴ Of particular note in the analysis was the finding that “human error” was a factor in the controversy, but that Race Director Michael Masi acted in “good faith and to the best of his knowledge” and that the results are “valid, final and cannot now be changed.”⁶⁵ While the results of Abu Dhabi 2021 and the World Drivers’ Championship are set in stone, improvements can be made to FIA’s judicial system to minimize the chances for a similar controversy to occur in the future.

II. THE ISSUE

Like many sports governing bodies around the world, FIA essentially enjoys a monopoly when it comes to the governance and regulation of all aspects of Formula 1 and its feeder series.⁶⁶ Outside of Formula 1, FIA is also the umbrella organization that oversees Formula 4, Formula 3, Formula 2, Formula E, and various regional Formula championships.⁶⁷ Outside the aegis of FIA, the main alternate open-wheel racing series is IndyCar, often called the “American Formula 1,”⁶⁸ but the IndyCar series is seen as less prestigious and less popular, especially to those outside American circles.⁶⁹ FIA’s

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Matt Morlidge, *FIA Releases Abu Dhabi Report: ‘Human Error’ a Factor in Max Verstappen, Lewis Hamilton Title Controversy*, SKY SPORTS (Mar. 19, 2022), <https://www.skysports.com/f1/news/12433/12570003/fia-releases-abu-dhabi-report-human-error-led-to-max-verstappen-lewis-hamilton-title-controversy> [https://perma.cc/Y224-FQF6] [https://web.archive.org/web/20231021180027/https://www.skysports.com/f1/news/12433/12570003/fia-releases-abu-dhabi-report-human-error-led-to-max-verstappen-lewis-hamilton-title-controversy].

66. FIA Int’l Sporting Code art. 1, § 1.1.1 (Jan. 1, 2021).

67. *FIA Competitions*, FIA, <https://www.fia.com/fia-competitions> [https://perma.cc/UM3V-UATX] [https://web.archive.org/web/20240218033214/https://www.fia.com/fia-competitions] (last visited February 17, 2024).

68. *See id.*

69. *See* Scott Mitchell, *Is Formula 1 a Better Competition than the IndyCar Series?*, BLEACHER REP. (Sept. 18, 2013), <https://bleacherreport.com/articles/1778326-is-formula-1-is-a-better-competition-than-the-indycar-series> [https://perma.cc/3E5Y-H2AH] [https://web.archive.org/web/20231106222253/https://bleacherreport.com/articles/1778326-is-formula-1-is-a-better-competition-than-the-indycar-series].

streamlined formula feeder process makes it easier for logistical and organizational purposes, but one international federation overseeing the bulk of motorsports worldwide creates issues of accountability since it is difficult for an organization to accurately judge itself. The FIA internal judicial system makes it difficult for those within the organizations to adequately adjudicate issues of sporting fairness by high-level officials, such as what happened at Abu Dhabi.

A. ROLE OF THE RACE DIRECTOR AND STEWARDS

The role of the Race Director is at the center of the conflict around Abu Dhabi. Under the Formula 1 Sporting Regulations,⁷⁰ and ISC,⁷¹ the Race Director works in permanent consultation with the clerk of the course and has overriding authority in several areas:

- a) The control of practice, sprint qualifying session and the race, adherence to the timetable and, if he deems it necessary, the making of any proposal to the stewards to modify the timetable in accordance with the Code or Sporting Regulations.
- b) The stopping of any car in accordance with the Code or Sporting Regulations.
- c) The stopping of practice, suspension of a sprint qualifying session or suspension of the race in accordance with the Sporting Regulations if he deems it unsafe to continue and ensuring that the correct restart procedure is carried out.
- d) The starting procedure.
- e) The use of the safety car.⁷²

Subsection e makes clear that the Race Director has wide latitude to decide every aspect of how the safety car is deployed and used. During the race, the Sporting Regulations Section 47.1 provides further clarifications to what the Race Director can do in the event of an incident:

The Race Director may report any on-track incident or suspected breach of these Sporting Regulations or the Code (an "Incident") to the stewards. After review it shall be at the discretion of the stewards to decide whether or not to proceed with an investigation. The stewards may also investigate an Incident noted by themselves.⁷³

The decision to investigate, and subsequent punishments, are handed out by the stewards rather than by the Race Director, but the Race Director still has a duty to notify the stewards of an incident for investigation.

70. Formula One Sporting Reguls. art. 15, § 15.3 (Dec. 8, 2021).

71. FIA Int'l Sporting Code art. 11, § 11.10 (Jan. 1, 2021).

72. Formula One Sporting Reguls. art. 15, § 15.3 (Dec. 8, 2021).

73. *Id.* art. 47, § 47.1.

Michael Masi served as Race Director from 2019 to 2022.⁷⁴ Abu Dhabi 2021 was not the first time his decisions as Race Director had been questioned. During the 2020 Turkish Grand Prix (GP), 2020 Emilia Romagna GP, 2021 Azerbaijan GP, and 2021 Belgian GP, his actions were criticized by drivers, teams, and the press.⁷⁵ The 2021 season was the first and last time where team radio messages between the pit wall and race control were publicly broadcast.⁷⁶ While the increased transparency in this manner was enormously popular with fans by providing them an inside view into the sometimes insightful but always entertaining radio messages,⁷⁷ such a wide open line of communication—especially between teams and the stewards of the race—can easily become a recipe for disaster, as showcased in Abu Dhabi.⁷⁸

After the FIA Commission analysis of the events at Abu Dhabi, FIA removed Masi from his post in February 2022, and offered him a new position within the organization. FIA then designated two individuals with previous motorsport experience—Niels Wittich and Eduardo Freitas—to serve as Race Director on a rotating basis for the 2022 season.⁷⁹ In July 2022, Masi left FIA entirely.⁸⁰ The Race Director rotation system was ended in October 2022 following an incident with a crane on track during the Japanese Grand Prix, and Niels Wittich served out the rest of the

74. Cork Gaines, *Former F1 Race Director Michael Masi Is Out at FIA After Contentious 2021 Abu Dhabi Finale, but It Was Not His First Controversy. Here's a Complete Timeline*, INSIDER (July 13, 2022), <https://www.insider.com/michael-masi-fl-fia-controversies-2022-7#former-formula-one-race-director-michael-masi-is-out-at-the-fia-ending-a-three-year-tumultuous-tenure-overseeing-races-at-the-sports-pinnacle-1> [<https://perma.cc/M9MH-DC82>].

75. Connor McDonagh, *Five High-Profile Mistakes Michael Masi Made as F1 Race Director*, CRASH (July 16, 2022), <https://www.crash.net/fl/feature/1007954/1/five-highprofile-mistakes-michael-masi-made-fl-race-director> [<https://perma.cc/6R2N-L8VQ>] [<https://web.archive.org/web/20230925033140/https://www.crash.net/fl/feature/1007954/1/five-highprofile-mistakes-michael-masi-made-fl-race-director>].

76. See Luke Smith, *FIA Radio Traffic Has Reduced Since F1 Started Broadcasting Them*, MOTORSPORT.COM (July 1, 2021), <https://www.motorsport.com/fl/news/fia-radio-messages-broadcast-masi/6622743/> [<https://perma.cc/5TS6-JQUL>] [<https://web.archive.org/web/20230925033620/https://www.motorsport.com/fl/news/fia-radio-messages-broadcast-masi/6622743/>]; *FIA President Mohammed Ben Sulayem Opens the Way for a New Step Forward in Formula 1 Refereeing*, FIA (Feb. 17, 2022), <https://www.fia.com/news/fia-president-mohammed-ben-sulayem-opens-way-new-step-forward-formula-1-refereeing> [<https://perma.cc/7HSD-G8KK>] [<https://web.archive.org/web/20231106224301/https://www.fia.com/news/fia-president-mohammed-ben-sulayem-opens-way-new-step-forward-formula-1-refereeing>].

77. Smith, *supra* note 76.

78. Craig Christopher, *Formula 1: Team Radio Reveals Drama, Intrigue, Hysteria and a Hint of Nastiness*, BLEACHER REPORT (Oct. 10, 2011), <https://bleacherreport.com/articles/887093-formula-1-team-radio-reveals-drama-intrigue-hysteria-and-a-hint-of-nastiness> [<https://perma.cc/X2YE-7EQT>] [<https://web.archive.org/web/20230925034054/https://bleacherreport.com/articles/887093-formula-1-team-radio-reveals-drama-intrigue-hysteria-and-a-hint-of-nastiness>].

79. Mohammed Ben Sulayem, President, FIA, *Address Regarding F1 Commission Meeting* (Feb. 17, 2022), <https://www.fia.com/news/fia-president-mohammed-ben-sulayem-opens-way-new-step-forward-formula-1-refereeing> [<https://perma.cc/A3QV-K452>] [<https://web.archive.org/web/20230925034454/https://www.fia.com/news/fia-president-mohammed-ben-sulayem-opens-way-new-step-forward-formula-1-refereeing>].

80. Gaines, *supra* note 74.

season as the sole Race Director.⁸¹ While it is likely that the public will never know what truly happened internally in FIA that led to Masi's ousting, since he signed an NDA, it is clear that he left his mark on the world of motorsport.⁸²

B. FIA'S JUDICIAL SYSTEM

1. FIA International Tribunal and International Court of Appeal

FIA's judicial system consists of two main courts: the International Tribunal and the International Court of Appeal. They are independent bodies with their own administration detached from the FIA structure, and which serve appellate and disciplinary functions within FIA.⁸³ This structure was adopted by the FIA General Assembly in 2010.⁸⁴ The Courts comprise eighteen to thirty-six Judges elected by the FIA General Assembly, with each country represented by not more than four Judges.⁸⁵ Those selected "must be and remain independent of the FIA and of the parties involved,"⁸⁶ and Judges must "respect the integrity and independence of the FIA Courts and to honour their duties of confidentiality with regard to the deliberations of the FIA Courts."⁸⁷

IT "exercises the FIA's disciplinary powers in the first instance (for cases not dealt with by the Stewards of the Meeting)," and "[d]ecisions taken by the IT can be appealed before the International Court of Appeal (ICA)."⁸⁸ Its jurisdiction covers matters outlined in Article 5.2 of the Judicial and Disciplinary Rules, including sections of most relevance to the Abu Dhabi controversy: Section 5.2.1.a, "contraven[tion] of the Statutes and Regulations of the FIA, including the International Sporting Code and the Code of Ethics but excluding the FIA Anti-Doping Regulations"; Section 5.2.1.c, "[pursuit of] an objective contrary or opposed to those of the FIA"; and Section

81. Luke Smith, *FIA Ends Race Director Rotation for Rest of 2022 F1 Season*, AUTOSPORT (Oct. 21, 2022), <https://www.autosport.com/f1/news/fia-ends-race-director-rotation-for-rest-of-2022-f1-season/10387596/> [https://perma.cc/4ULB-U32H] [https://web.archive.org/web/20230919023558/https://www.autosport.com/f1/news/fia-ends-race-director-rotation-for-rest-of-2022-f1-season/10387596/].

82. Tom Sunderland, *F1 Fans Suspicious After Michael Masi 'Signed NDA' with FIA Over Abu Dhabi GP Fiasco*, MIRROR (Aug. 1, 2022), <https://www.mirror.co.uk/sport/formula-1/masi-fia-abu-dhabi-nda-27629056> [https://perma.cc/V7TZ-3PYG].

83. FIA Judicial and Disciplinary Rules pmbl., ch.1, art. 1, §1.1 (Jan. 1, 2021), https://www.fia.com/sites/default/files/2021_fia_judicial_and_disciplinary_rules-clean_0.pdf [https://perma.cc/TD9G-PTST] [https://web.archive.org/web/20230919012644/https://www.fia.com/sites/default/files/2021_fia_judicial_and_disciplinary_rules-clean_0.pdf].

84. *FIA Courts*, FIA, <https://www.fia.com/fia-courts> [https://perma.cc/XDJ6-8C6L] [https://web.archive.org/web/20231106230431/https://www.fia.com/fia-courts] (last visited Nov. 6, 2023).

85. FIA Judicial and Disciplinary Rules ch. 1, art. 1, § 1.2 (Jan. 1, 2021).

86. *Id.* ch. 1, art. 1, § 1.8.

87. *Id.* ch. 1, art. 1, § 1.10.

88. *International Tribunal*, FIA, <https://www.fia.com/international-tribunal> [https://perma.cc/MJD4-9C6Y] [https://web.archive.org/web/20230919013332/https://www.fia.com/international-tribunal] (last visited Oct. 21, 2023).

5.2.1.d.2, “by words, actions or writings[,] . . . damage to the standing and/or reputation of, or loss to, the FIA, its bodies, its members or its executive officers.”⁸⁹ Each case in front of the IT is decided strictly on its own merits, where the Tribunal can consider previous rulings but is not legally bound to follow them.⁹⁰ Hearings are held before a judging panel and presided over by the President of the Hearing, and each party outlines its case “in accordance with adversarial principles.”⁹¹ Decisions are based on simple majority, with the President of the Hearing as a tiebreaker when necessary.⁹² Once a decision is made, “[o]nly the FIA, under the authority of its President, and the Respondent may appeal against a decision to the ICA.”⁹³ While Section 6.7.2 claims that IT decisions are made public, an examination of the website shows only three published prior rulings.⁹⁴ This lack of transparency adds to the deeply insular nature of FIA as an organization and the difficulties of ensuring that the processes are fair.

The ICA is the final appeals tribunal for international motorsport, established under the FIA Statutes and FIA International Sporting Code, and resolves disputes brought by any National Sporting Authority or President of the FIA, or non-sporting disputes brought by national motoring organizations affiliated with FIA.⁹⁵ The ICA hears four types of appeal cases: “(1) appeals concerning sporting decisions; (2) appeals concerning decisions taken by the IT; (3) appeals concerning decisions taken by the CCAP [(Cost Cap Adjudication Panel)]; and (4) appeals concerning the interpretation or application of the FIA’s statutes.”⁹⁶ In terms of the Abu Dhabi controversy, the most relevant types of possible appeals are appeals concerning sporting decisions and appeals concerning the interpretation or application of the FIA’s statutes. Outside of hearings, the ICA can “definitely settle by arbitration disputes of a sporting, contractual or regulatory nature.”⁹⁷ To bring an appeal for a hearing, parties need to pay a deposit ranging from €3,000 to €6,000, depending on who the appeal is against.⁹⁸ Similar to the procedures of the IT, hearings before the ICA are conducted by the judging panel and presided over by the President of the Hearing, and the hearing plays out in accordance with adversarial principles.⁹⁹ Once a decision is made, it is “binding with immediate effect as soon as [it is] issued.”¹⁰⁰ And there is a right of review if new evidence is discovered, or

89. FIA Judicial and Disciplinary Rules ch. 3, art 5.2 (Jan. 1, 2021).

90. *Judgements of the IT*, FIA, <https://www.fia.com/judgements-it> [<https://perma.cc/7277-UG9Z>] [<https://web.archive.org/web/20231106231053/https://www.fia.com/judgements-it>] (last visited Nov. 9, 2023).

91. FIA Judicial and Disciplinary Rules ch. 3, art. 6.6, § 6.6.2 (Jan. 1, 2021).

92. *Id.* ch. 3, art. 6.7, § 6.7.1.

93. *Id.* ch.3, art. 6.8.

94. See *Judgements of the IT*, *supra* note 90.

95. *International Court of Appeal*, FIA, <https://www.fia.com/international-court-appeal> [<https://perma.cc/6H6E-BJNR>] [<https://web.archive.org/web/20230919013944/https://www.fia.com/international-court-appeal>] (last visited Oct. 21, 2023).

96. FIA Judicial and Disciplinary Rules ch. 4, art 9.1 (Jan. 1, 2021).

97. *Id.* ch. 4, art. 9.2.

98. *Id.* ch. 4, art.10.1.2, § 10.1.2.a.

99. *Id.* ch.4, art 10.9.

100. *Id.* ch. 4, art. 10.10, § 10.10.6.

the ICA can choose to reexamine a case “on its own initiative or following a petition for review by either one of the parties concerned and/or a party that is directly affected by any decision handed down, or by the President of the FIA” within twelve months of the decision.¹⁰¹

Since 2001, the ICA has heard around two dozen cases pertaining to Formula 1. Recent examples of ICA cases include a 2021 withdrawn appeal by Aston Martin regarding a breach of the technical regulations;¹⁰² the 2020 withdrawn appeals by Renault, BWT Racing Point (now Aston Martin), and Ferrari over similarities in car design;¹⁰³ a 2019 appeal by Alfa Romeo over the ability to appeal a time penalty;¹⁰⁴ a 2018 appeal by Haas over a technical regulation;¹⁰⁵ and a 2014 appeal by Red Bull over technical regulations.¹⁰⁶ Of these cases, a third ended up being withdrawn, and approximately half concerned interpretations of the technical regulations. Only a few notable cases, such as the “pink Mercedes” controversy,¹⁰⁷ Spygate,¹⁰⁸ the PK Racing prejudicial statements,¹⁰⁹ and the 2005 decision of the World Motor Sport Council,¹¹⁰ are not related to technical regulations or on-track driver actions. In no published cases did the ICA hear an appeal that would have had a direct and immediate impact on the World Driver’s Championship standings, as would have happened had Mercedes chosen to move forward with an appeal after Abu Dhabi.

Had Mercedes gone ahead with its appeal, the case would have fallen under the first type of ICA appeal, “in the context of a competition forming part of a FIA Championship, Cup, Trophy, Challenge or Series, appeals against decisions of the Stewards of an event brought by organisers, competitors, drivers or other licence-holders that are addressees of such decisions or that are individually affected by such

101. *Id.* ch. 4, art. 11.3, § 11.3.2.

102. FIA, INDEX OF ICA JUDGMENTS 2001–PRESENT, at 2 (n.d.), https://www.fia.com/sites/default/files/index_of_ica_judgments_2001-present_11.pdf [https://perma.cc/6F8F-RRKN] [https://web.archive.org/web/20230919014322/https://www.fia.com/sites/default/files/index_of_ica_judgments_2001-present_11.pdf].

103. *Id.* at 5–6.

104. *Id.* at 9–10.

105. *Id.* at 12–13.

106. *Id.* at 25–26.

107. Giles Richards, *F1 Teams Unhappy as Racing Point Fined but Allowed To Race with ‘Pink Mercedes,’* THE GUARDIAN (Aug. 7, 2020), <https://www.theguardian.com/sport/2020/aug/07/racing-point-fined-and-docked-points-for-copying-parts-of-mercedes-f1-car> [https://perma.cc/M4TU-DSGM] [https://web.archive.org/web/20230919015207/https://www.theguardian.com/sport/2020/aug/07/racing-point-fined-and-docked-points-for-copying-parts-of-mercedes-f1-car].

108. Andrew Benson, *F1 ‘Spygate’: Fifteen Years on from the Sporting Scandal that Had Everything*, BBC (Nov. 17, 2022), <https://www.bbc.com/sport/formula1/63575321> [https://perma.cc/W8ZC-7LJD] [https://web.archive.org/web/20230919015456/https://www.bbc.com/sport/formula1/63575321].

109. FIA, *supra* note 102, at 41.

110. Adam Cooper, *The 2005 US GP Farce: The Full Inside Story*, MOTORSPORT.COM (June 19, 2020), <https://us.motorsport.com/f1/news/the-2005-us-gp-farce-the-full-inside-story/4809049/> [https://perma.cc/2LES-ZWPU] [https://web.archive.org/web/20230919015733/https://us.motorsport.com/f1/news/the-2005-us-gp-farce-the-full-inside-story/4809049/].

decisions,”¹¹¹ or the fourth type, an “appeals brought by FIA Members in relation to the interpretation or application of the FIA Statutes by the FIA.”¹¹² Specifically, Mercedes could have brought the first type of appeal against the stewards’ decisions outlined in Document 58, in which the stewards interpreted the Race Director’s powers under Article 15.3 and Article 48.13 of the Sporting Regulations to essentially “override” Article 48.12.¹¹³ The team could have also brought the fourth type of appeal to challenge how Masi’s safety car unlapping procedure to ensure a final lap of racing contravened the International Sporting Code Article 1.1.1, which charges FIA with “enforc[ing] regulations based on the fundamental principles of safety and sporting fairness.”¹¹⁴

The team could have pointed to Masi’s failure to consistently apply the sporting regulations. During the 2020 Eifel Grand Prix, the safety car was deployed during the final third of the race to give the marshals time to safely remove a retired car that was stopped by the side of the track, and remained out for five laps despite the cold conditions, making a slowdown for that period of time potentially dangerous for tyre conditions.¹¹⁵ When asked why the safety car was deployed for so long, Masi stated that since all the cars up to the fifth place car had been lapped, that length of time was required for the other cars to unlap themselves, noting that “there’s a requirement in the sporting regulations, to wave all lapped cars past. So 10, 11 cars, that had to unlap themselves, and therefore the safety car period was a bit longer than what we would have normally expected.”¹¹⁶ After the race, some drivers criticized the decision to leave the safety car out that long, including Verstappen who opined that “I think they just wanted to make it more exciting again because of the gaps.”¹¹⁷ Masi had interpreted the safety car rules differently during the 2020 season, reading Sporting Regulation Section 48.12 “any cars that have been lapped” to mean “all cars that have been lapped,”¹¹⁸ than during Abu Dhabi 2021, where the clause was interpreted as removing only those lapped cars that “interfere” in racing.¹¹⁹ This lack of consistent application of the sporting regulations is especially problematic in a sport where every point gained in the constructor’s standings translates to millions of dollars of additional prize money at the end of the season, and consequently millions of dollars more that can be put towards

111. FIA Judicial and Disciplinary Rules ch. 4, art. 9.1, § 9.1.1(a) (Jan. 1, 2021).

112. *Id.* ch. 4, art. 9.1, § 9.1.4(b).

113. See CONNELLY ET AL., *supra* note 48.

114. FIA Int’l Sporting Code art. 1.1, § 1.1.1 (Jan. 1, 2021).

115. Luke Smith, *FIA Race Director Masi Explains Norris F1 Eifel GP Safety Car Decision*, AUTOSPORT (Oct. 12, 2020), <https://www.autosport.com/f1/news/fia-race-director-masi-explains-norris-f1-eifel-gp-safety-car-decision-4978255/4978255/> [https://perma.cc/8B5S-5W56] [https://web.archive.org/web/20230919020134/https://www.autosport.com/f1/news/fia-race-director-masi-explains-norris-f1-eifel-gp-safety-car-decision-4978255/4978255/].

116. *Id.*

117. Dieter Rencken & Keith Collantine, *FIA Rejects Verstappen’s Claim Safety Car Was Used To Make Race More Exciting*, RACEFANS (Oct. 11, 2020), <https://www.racefans.net/2020/10/11/fia-rejects-verstappens-claim-safety-car-was-used-to-make-race-more-exciting/> [https://perma.cc/JMX6-5UHH] [https://web.archive.org/web/20230919020610/https://www.racefans.net/2020/10/11/fia-rejects-verstappens-claim-safety-car-was-used-to-make-race-more-exciting/].

118. See Smith, *supra* note 115.

119. Formula One Sporting Reguls. art. 48, § 48.12 (Dec. 8, 2021).

research and development of a faster car.¹²⁰ The already high-stakes nature of every race, coupled with the season-long head-to-head dramatics of the 2021 season and the need to provide an entertaining product for fans, are two of the reasons why external accountability measures are needed.

In even the most dramatic of championship showdowns in previous seasons—the 1990 Japanese Grand Prix battle between Ayrton Senna and Alain Prost, the 1997 European Grand Prix title fight between Michael Schumacher and Giles Villeneuve, and the 1994 Australian Grand Prix fight between Michael Schumacher and Damon Hill come to mind—none of these previous title fights’ results hinged on the actions of the Race Director or stewards.¹²¹ Mercedes’ desire not to pursue its appeal and win Lewis Hamilton’s historic eighth Championship in the courts—rather than on the track—is understandable in this regard. Even had the team gone forward with the appeal, it is unlikely that the team would have gotten the result it wanted, and there is no way to know what would have happened during the race had it not been for Masi’s meddling.

2. Post-2022 Season Analysis

With a full 2022 season of Formula 1 racing since Abu Dhabi 2021 wrapped up, the issues that the race forced into the spotlight remain more relevant than ever. Following the first recommended course of action after FIA conducted the Abu Dhabi investigation, the Remote Operations Center (ROC) in Geneva has been up and running.¹²² The ROC was used most notably during the 2022 season to review the Japanese Grand Prix after a recovery crane was deployed on track to retrieve a crashed car during torrential rain conditions, causing drivers to fear for their safety during the low visibility conditions.¹²³ Data collected by the ROC was used to create a timeline of the incidents and monitoring tasks are to be delegated to the ROC for future races. While the inspiration for the ROC came from the Video Assistant Referee (VAR) system used in football, “those working at the ROC do not make definitive rulings, and

120. Justin Cohen, *Chasing the Bag: Breaking Down F1 Constructors Payout*, ONE37PM (Mar. 20, 2023), <https://www.one37pm.com/sports/f1-constructors-payout> [https://perma.cc/REN6-BGAJ] [https://web.archive.org/web/20230919021024/https://www.one37pm.com/sports/f1-constructors-payout].

121. Simmons & Turner, *supra* note 5.

122. Adam Cooper, *F1’s Version of VAR: Remote Ops Centre that’s a ‘Sanity Check’ for Stewards*, MOTOR SPORT MAG. (Sept. 29, 2022), <https://www.motorsportmagazine.com/articles/single-seaters/f1/fls-version-of-var-remote-ops-centre-thats-a-sanity-check-for-stewards?v=7516fd43adaa> [https://perma.cc/2JFA-8MCU] [https://web.archive.org/web/20230919021619/https://www.motorsportmagazine.com/articles/single-seaters/f1/fls-version-of-var-remote-ops-centre-thats-a-sanity-check-for-stewards?v=7516fd43adaa].

123. *The Full FIA Statement on F1 Japanese GP Crane Incident Review*, AUTOSPORT (Oct. 21, 2022), <https://www.autosport.com/f1/news/the-full-fia-statement-on-f1-japanese-gp-review/10387595/> [https://perma.cc/ZF5Y-G9DA] [https://web.archive.org/web/20230919021802/https://www.autosport.com/f1/news/the-full-fia-statement-on-f1-japanese-gp-review/10387595/].

instead are providing extra information and working as spare pairs of eyes.”¹²⁴ Team members can communicate with race control, technical teams, and other regulatory teams on the ground to provide data and connect experts with those at the track.¹²⁵ There may be drawbacks to the ROC’s limited supplementary functions, but its data collection and analysis have already been helpful to race control. Moreover, in the future, its role as a training tool for race directors, stewards, and other leadership, by simulating a race weekend with challenging conditions, is certainly promising to reduce the human error that marred Masi’s tenure.¹²⁶

Following the second recommendation, team principal radio interventions are no longer allowed.¹²⁷ FIA President Mohammed Ben Sulayem stated that

I think it was used as entertainment for the fans, but actually it has its downside . . . [a]nd then the race director and the whole race control was just bombarded by unnecessary [messages] and everybody was complaining. That was putting, I don’t think, pressure, but I think stress on the race director there.¹²⁸

From the 2022 season onwards, only team managers will have a direct line to race control to ask questions, while routine calls will be handled by another individual in race control.¹²⁹ In the balance between transparency and effectiveness, the barring of team principals is likely going to be beneficial, especially in situations such as Abu Dhabi where the Race Director needed to make important decisions and did not have the time to deal with lobbying by the teams involved.

Under the third recommendation, the safety car rules have been clarified for the 2022 season and beyond.¹³⁰ The updated Article 55.13 of the 2022 Sporting Regulations now reads “If the clerk of the course considers it safe to do so, and the message ‘LAPPED CARS MAY NOW OVERTAKE’ has been sent to all Competitors using the official messaging system, all cars that have been lapped by the leader will be required to pass

124. Cooper, *supra* note 122.

125. *Id.*

126. *Id.*

127. Adam Cooper, *Who Will Have the F1 Race Director Role in 2022?*, AUTOSPORT (Feb. 1, 2022), <https://www.autosport.com/f1/news/who-will-have-the-f1-race-director-role-in-2022/7792948/> [<https://perma.cc/R64Q-CRF8>] [<https://web.archive.org/web/20230919022159/https://www.autosport.com/f1/news/who-will-have-the-f1-race-director-role-in-2022/7792948/>].

128. Keith Collantine, *Teams’ Discussions with F1 Race Director Should Be Broadcast – Horner*, RACEFANS (Mar. 20, 2022), <https://www.racefans.net/2022/03/20/teams-discussions-with-f1-race-director-should-be-broadcast-horner/> [<https://perma.cc/VLQ9-65AM>] [<https://web.archive.org/web/20230919022542/https://www.racefans.net/2022/03/20/teams-discussions-with-f1-race-director-should-be-broadcast-horner/>].

129. Cooper, *supra* note 122.

130. Adam Cooper, *F1 Clarifies Safety Car Rules After Abu Dhabi Controversies*, AUTOSPORT (Mar. 15, 2022), <https://www.autosport.com/f1/news/f1-clarifies-safety-car-rules-after-abu-dhabi-controversies-9025019/> [<https://perma.cc/KC8V-MLYY>] [<https://web.archive.org/web/20230919022807/https://www.autosport.com/f1/news/f1-clarifies-safety-car-rules-after-abu-dhabi-controversies-9025019/>].

the cars on the lead lap and the safety car.¹³¹ The change from “any” to “all” makes it unequivocally clear that the Race Director cannot choose for only some of the lapped cars to overtake, but not others, and brings the regulations more in line with common practice prior to Abu Dhabi.

Following the final recommendation, the rotating Race Director system was implemented for the 2022 season until the Japanese Grand Prix, after which only one of the Race Directors served out the remainder of the season.¹³² FIA President Ben Sulayem had decided on the rotating system because he felt that “[w]e can’t trust each other because what if something happens? We have to be prepared for any contingency if we want to strengthen our sport.”¹³³ The issue is that there needs to be some baseline level of trust between other FIA officials and the Race Director to make decisions in real time. Mercedes’ driver, Grand Prix Drivers’ Association director George Russell, and other drivers have raised concerns about the rotation system. Russell stated that drivers “believe that having the rotation isn’t the best thing for a sport, for that consistency.”¹³⁴ Further, he spoke about how “[i]t was frustrating sometimes when we were talking about a certain incident on track and the stewards who actually made that decision weren’t there to give their views on this.”¹³⁵ In most other sports and organizations, leadership and final decision-making are typically in the hands of one individual supported by others, rather than two people on rotation. While the concerns of concentrating duties and responsibilities in the Race Director are legitimate, the lack of consistency, especially with decision-making around the Japanese Grand Prix and the United States Grand Prix during the 2022 season, suggests that a sole experienced Race Director is the better method.¹³⁶

C. INADEQUACIES OF CURRENT REMEDIES

The main shortcoming of the current remedies available to drivers and teams in Formula 1 is that there is little recourse outside the FIA system when it comes to decisions made by FIA leadership. The Judicial and Disciplinary Rules state that

131. Formula One Sporting Reguls. art. 55, § 55.13 (Mar. 15, 2022), https://www.fia.com/sites/default/files/2022_formula_1_sporting_regulations_-_iss_5_-_2022-03-15.pdf [<https://perma.cc/U9K6-JVKK>] [https://web.archive.org/web/20230919023124/https://www.fia.com/sites/default/files/2022_formula_1_sporting_regulations_-_iss_5_-_2022-03-15.pdf].

132. Smith, *supra* note 81.

133. Michelle Foster, *George Russell Isn't a Fan of the FIA's Plans To Rotate Race Directors Again*, PLANETF1 (Jan. 12, 2023, 1:15 PM), <https://www.planetf1.com/news/george-russell-not-happy-rotate-race-directors/> [<https://perma.cc/ER7L-QSGN>] [<https://web.archive.org/web/20230919023755/https://www.planetf1.com/news/george-russell-not-happy-rotate-race-directors/>].

134. *Id.*

135. Scott Mitchell-Malm, *FIA Abandons Rotation of F1 Race Director for Rest of 2022*, THE RACE (Oct. 21, 2022), <https://the-race.com/formula-1/fia-abandons-rotation-of-f1-race-director-for-rest-of-2022/> [<https://perma.cc/T6XH-NHMF>] [<https://web.archive.org/web/20230919024010/https://the-race.com/formula-1/fia-abandons-rotation-of-f1-race-director-for-rest-of-2022/>].

136. Smith, *supra* note 81.

“nothing in these rules shall prevent any party from pursuing any right of action which it may have before any court or tribunal,” but this latitude is “subject at all times to such party having first exhausted all mechanisms of dispute resolution set out in the Statutes and regulations of the FIA.”¹³⁷ The requirement of first having to go through the FIA dispute resolution system means added expense, time, and the possibility of self-selecting out of fighting a protracted battle in the FIA court systems that the party feels that it has little chance of winning, which was the path chosen by Mercedes after Abu Dhabi. Additionally,

by agreeing to participate in any capacity whatsoever . . . in any competition or event organised, directly or indirectly, by the FIA or subject to the regulations and decisions of the FIA, all persons concerned . . . accept and acknowledge the obligation first to use the procedures established by the Statutes, the FIA International Sporting Code, the present Rules and any other regulations of the FIA.¹³⁸

Further, CAS, the typical international body to settle sporting disputes, is “exclusively competent to resolve definitively appeals against the decisions of the FIA Anti-Doping Disciplinary Committee” and thus cannot be an avenue to settle appeals not related to doping.¹³⁹

Despite this, FIA and Formula 1 are no stranger to lawsuits. Due to the highly technical nature of the sport, and the lucrative revenue generated by sponsorships, licensing for merchandise, and ticketing, it is no surprise that there has been legal action over nearly every aspect of Formula 1 racing in a wide range of jurisdictions, including within the American legal system.¹⁴⁰ At the start of 2023, AlphaTauri’s rookie Nyck de Vries faced a lawsuit in Dutch court over allegedly withholding information and breach of agreement over a loan he received when he was still in Formula 2.¹⁴¹ In the 2021 case *Ferguson v. Dolphins*, a Florida district court dismissed a case brought by residents of Miami-Dade county against FIA over alleged equal protection violations and noise ordinance disruptions caused by the Miami Grand Prix, which held its inaugural race during the 2022 season.¹⁴² In the 2020 case *Nygaard v. Federation Internationale de l’Automobile et al.*, inventor Jens Nygaard settled a case with

137. FIA Judicial and Disciplinary Rules ch. 6, art. 13, § 13.1 (Jan. 1, 2021).

138. *Id.* ch. 6, art. 13, § 13.2.

139. FIA Int’l Sporting Code art. 15.10 (Jan. 1, 2021).

140. Adam Cooper, *F1 Reports Increase in Quarterly Revenue as COVID Recovery Complete*, MOTORSPORT (Nov. 5, 2022, 4:43 AM), <https://us.motorsport.com/fl/news/fl-reports-increase-in-revenue-in-latest-quarter/10394979/> [<https://perma.cc/AS2X-SM3A>] [<https://web.archive.org/web/20230923001515/https://us.motorsport.com/fl/news/fl-reports-increase-in-revenue-in-latest-quarter/10394979/>].

141. Luke Smith & Erwin Jaeggi, *De Vries Facing Lawsuit from Real Estate Magnate Over €250k Loan*, MOTORSPORT (Jan. 19, 2023), <https://www.motorsport.com/fl/news/de-vries-facing-lawsuit-from-real-estate-magnate-over-250k-loan/10422503/> [<https://perma.cc/QQ8E-3NR3>] [<https://web.archive.org/web/20230923001631/https://www.motorsport.com/fl/news/de-vries-facing-lawsuit-from-real-estate-magnate-over-250k-loan/10422503/>].

142. *Ferguson v. Dolphins*, No. 20-24483-Civ-Scola, 2021 U.S. Dist. LEXIS 126001 (S.D. Fla. July 6, 2021).

FIA in a Texas district court over alleged patent infringement surrounding the Halo,¹⁴³ a curved titanium bar that surrounds the cockpit and serves as a protection system for drivers, and which has been credited with saving the lives of at least three drivers since its introduction in 2018.¹⁴⁴ In the 2015 case *Giedo van der Garde BV v Sauber Motorsport AG*, Sauber driver Giedo van der Garde successfully won in Swiss Arbitration and later in the Victorian Supreme Court in Australia to enforce van der Garde's contract and allow him to drive for Sauber that season, though he eventually settled with the team and left Formula 1.¹⁴⁵ In the 2007 case *Bowers v. Fédération Internationale De L'Automobile*, disgruntled fans sued the organizers of the 2005 United States Grand Prix alleging breach of contract, promissory estoppel, and negligence after fourteen of twenty cars did not participate in the race due to dangerous tyres, though the Seventh Circuit affirmed the dismissal of all claims.¹⁴⁶ And in 1984, a superior court jury in Rhode Island awarded \$9.6 million to the estate of American driver Mark Donohue, who was killed when his Goodyear-manufactured tyre blew out during practice, causing him to fatally crash into the barriers at the 1975 Austrian Grand Prix.¹⁴⁷

Notably, many of the above cases filed in civil courts were brought by fans, residents near a Grand Prix track, a sponsor, or other entities not as directly involved with the Formula 1 universe as a team or a driver. Indeed, even the van der Garde arbitration case which involved a driver was brought to settle a contract dispute, which is dealt with by the Contract Recognition Board, a separate entity dealing specifically with contracts within FIA which is not covered by the scope of this Note.¹⁴⁸ None of these cases concerned the actions of FIA leadership nor directly impacted the awarding of that season's World Driver's Championship.

143. Kelcee Griffis, *Formula One To Settle Patent Case over 'Halo' Safety Structures*, BLOOMBERG L. (Sept. 21, 2022), <https://www.bloomberglaw.com/bloomberglawnews/ip-law/X9G35GF0000000> [<https://perma.cc/NKS8-SNJ3>] [<https://web.archive.org/web/20230923002153/https://news.bloomberglaw.com/ip-law/formula-one-to-settle-patent-case-over-halo-safety-structures/>].

144. Sunday Times Driving, *What Is F1 Halo, When It Was Introduced and How Does It Save Lives?*, THE SUNDAY TIMES DRIVING (July 5, 2022), <https://www.driving.co.uk/news/motor-sport/fl-halo-explained/> [<https://perma.cc/96ZP-MECV>] [<https://web.archive.org/web/20230923002337/https://www.driving.co.uk/news/motor-sport/fl-halo-explained/>].

145. *Giedo van der Garde BV v Sauber Motorsport AG* [2015] VSC 80 (Austl.).

146. *Bowers v. Fed'n Internationale De L'Automobile*, 489 F.3d 316 (7th Cir. 2007).

147. *Settlement Reached in Donohue Case*, UPI (Apr. 9, 1986), <https://www.upi.com/Archives/1986/04/09/Settlement-reached-in-Donohue-case/7324513406800/> [<https://perma.cc/5CAX-H4TK>].

148. *Decision of the Contract Recognition Board 02/09/2022*, FIA (Feb. 9, 2022), <https://www.fia.com/news/decision-contract-recognition-board-02092022> [<https://perma.cc/E6XL-US3U>] [<https://web.archive.org/web/20230923002628/https://www.fia.com/news/decision-contract-recognition-board-02092022/>].

D. COMPARISON WITH OTHER LEAGUES

1. Structural Similarities and Differences

While there are several key differences between Formula 1, MLB, and FIFA, a comparison with one major American sports league and one major international federation can offer valuable insight on ways to improve accountability and transparency in FIA's own governing structure. One of the most notable differences between these three organizations is the number of participants. There are only twenty drivers on the Formula 1 grid,¹⁴⁹ whereas there are a little over a thousand active players in MLB¹⁵⁰ and over 100,000 professional association football players worldwide.¹⁵¹ This may be partly due to cost. To even make it through the ranks of motorsport before reaching Formula 1 is prohibitively expensive. By some calculations, it can cost around \$10 million to graduate from karting to Formula 1, with karting alone costing over \$60,000 per year.¹⁵² In addition, most drivers just starting out do not have the benefit of sponsorships or outside funding, which means they and their families must foot the bill until they are able to join a talent scheme under one of the major teams to help with costs.¹⁵³ In comparison, the cost to become a football or baseball player is closer to \$30,000 to \$50,000.¹⁵⁴ While still a significant investment in aspiring young athletes, most of whom will not make it to the big leagues, this is significantly more attainable than the millions of dollars required for young drivers to have a shot at becoming one of twenty on the Formula 1 starting grid.

In terms of governing structure, MLB governs just one sport—baseball—while the FIA also oversees rally, hill climb, cross country, and other motorsport events,¹⁵⁵ and

149. *F1 Drivers 2023*, FORMULA 1, <https://www.formula1.com/en/drivers.html> [<https://perma.cc/E2ZS-EAJC>] [<https://web.archive.org/web/20230923002820/https://www.formula1.com/en/drivers.html>] (last visited Oct. 21, 2023). While the webpage roster lists twenty-two drivers, the number of actual seats is twenty because the webpage lists the driver replaced by another driver midway through the season and includes a reserve driver who only drove for five races.

150. Christina Gough, *Number of Players on Major League Baseball Rosters on Opening Day from 2013 To 2023*, STATISTA (Sept. 12, 2023), <https://www.statista.com/statistics/639334/major-league-baseball-players-on-opening-day-rosters/> [<https://perma.cc/QJP8-2T2Y>] [<https://web.archive.org/web/20231021214617/https://www.statista.com/statistics/639334/major-league-baseball-players-on-opening-day-rosters/>].

151. Statista Research Department, *Number of Men's Professional Soccer Players Worldwide in 2021, by Country of Origin*, STATISTA (Dec. 9, 2022), <https://www.statista.com/statistics/1283927/number-pro-soccer-players-by-country/> [<https://perma.cc/8LUU-UMH4>] [<https://web.archive.org/web/20230923003206/https://www.statista.com/statistics/1283927/number-pro-soccer-players-by-country/>].

152. Engine Builder, *The Cost of Raising a Formula 1 Driver*, ENGINE BUILDER (June 13, 2019), <https://www.enginebuildermag.com/2019/06/the-cost-of-raising-a-formula-1-driver/> [<https://perma.cc/XHM3-6H2P>] [<https://web.archive.org/web/20230923003303/https://www.enginebuildermag.com/2019/06/the-cost-of-raising-a-formula-1-driver/>].

153. *Id.*

154. *Id.*

155. *FIA Competitions*, *supra* note 67.

FIFA also oversees beach soccer and futsal. Because of the single sport structure in MLB, there is no similar opportunity for a Race Director type of individual to affect the outcome of a championship with a single decision that contravenes the rules. Even the Commissioner, who is given a broad range of powers to act in the “best interest” of the sport,¹⁵⁶ does not enjoy such wide-ranging latitude. In terms of day-to-day operations, MLB, FIA, and FIFA essentially operate as monopolies in their respective fields. And all three organizations have their own internal systems of justice, outlined below.

2. MLB Judicial System

The majority of disputes in Major League Baseball concern labor,¹⁵⁷ and much of the responsibility for labor relations and the power of investigation in MLB is vested in the Commissioner. Under the Major League Constitution Article II, the function of the Commissioner includes:

(b) To investigate, either upon complaint or upon the Commissioner's own initiative, any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball

(c) To determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises, and to take such action either against Major League Clubs or individuals, as the case may be.¹⁵⁸

Further, Article VI Section 1 of the Constitution gives the Commissioner the power to hear

all disputes and controversies related in any way to professional baseball . . . other than those whose resolution is expressly provided for by another means . . . shall be submitted to the Commissioner, as arbitrator, who, after hearing, shall have the sole and exclusive right to decide such disputes and controversies and whose decision shall be final and unappealable.¹⁵⁹

156. MAJOR LEAGUE Baseball, THE OFFICIAL PROFESSIONAL BASEBALL RULES BOOK 25 (2021), <https://registration.mlbpa.org/pdf/majorleaguerules.pdf> [https://perma.cc/33KT-K4ZW] [https://web.archive.org/web/20230923003602/https://registration.mlbpa.org/pdf/majorleaguerules.pdf].

157. See Dayn Perry, *MLB Lockout: A Brief History of Strikes and Lockouts as Baseball Comes To a Halt for First Time in 26 Years*, CBS SPORTS (Dec. 5, 2021), <https://www.cbssports.com/mlb/news/mlb-lockout-a-brief-history-of-strikes-and-lockouts-as-baseball-comes-to-a-halt-for-first-time-in-26-years/> [https://perma.cc/KZ83-3478] [https://web.archive.org/web/20231106234446/https://www.cbssports.com/mlb/news/mlb-lockout-a-brief-history-of-strikes-and-lockouts-as-baseball-comes-to-a-halt-for-first-time-in-26-years/].

158. MAJOR LEAGUE CONST. art. II, § 2(b)–(c), <https://s3.documentcloud.org/documents/6784510/MLB-Constitution.pdf> [https://perma.cc/NP7F-R8RH] [https://web.archive.org/web/20231021220009/https://s3.documentcloud.org/documents/6784510/MLB-Constitution.pdf].

159. *Id.* art. IV, § 1.

This power is separate from and does not alter the “Commissioner’s powers to act in the best interests of Baseball under Article II.”¹⁶⁰ Under Section 2, the Clubs recognize that “it is in the best interests of Baseball that all actions taken by the Commissioner under the authority of this Constitution . . . be accepted and complied with . . . and that the Clubs not otherwise engage in any form of litigation between or among themselves or with any Major League Baseball entity.”¹⁶¹ Further, the Clubs “agree to be finally and unappealably bound by actions of the Commissioner and all other actions, decisions or interpretations taken or reached pursuant to the provisions of this Constitution and severally waive such right of recourse to the courts as would otherwise have existed in their favor.”¹⁶²

While the Commissioner does enjoy significant powers, he is not all-powerful, and MLB is no stranger to litigation. Throughout history, the “best interest of baseball” clause has been interpreted widely: in 1978 when Commissioner Bowie Kuhn invoked the clause to prevent Oakland Athletics owner Charlie Finley from selling his best players to rival teams in *Finley v. Kuhn*,¹⁶³ and in 1990 when Commissioner Fay Vincent cited the clause when banning Yankees owner George Steinbrenner after Steinbrenner paid a gambler to investigate his own team’s right fielder Dave Winfield.¹⁶⁴

Since 1968, a new Collective Bargaining Agreement (CBA) between the league and the Major League Baseball Players Association (MLBPA) has been hammered out every few years.¹⁶⁵ The CBA concerns the rules of employment and financial structure of the game, including the salary structure, free agency, salary arbitration, amateur draft rules, drug testing, on-field rules, and the injured list.¹⁶⁶ Most recently, the start of the 2022 season was delayed after a ninety-nine-day lockout, with the new CBA eventually signed and in effect until the end of the 2026 season.¹⁶⁷ Under the terms of the CBA, notices of investigations are sent to the player and the Association who provide reasonable cooperation. The player and Association reserve the right to assert that the investigatory request does not require cooperation, and disputes over whether

160. *Id.* art. VI, § 1.

161. *Id.* art. VI, § 2.

162. *Id.*

163. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978).

164. Associated Press, *Steinbrenner Is Ordered To Quit : Baseball: Vincent Rules that He Must Resign as General Partner of Yankees by Aug. 20 for Making \$40,000 Payment To Gambler*, LOS ANGELES TIMES (July 31, 1990), <https://www.latimes.com/archives/la-xpm-1990-07-31-sp-1064-story.html> [<https://perma.cc/SVT5-XBLK>] [<https://web.archive.org/web/20231121051956/https://www.latimes.com/archives/la-xpm-1990-07-31-sp-1064-story.html>].

165. *Collective Bargaining Agreement*, BASEBALL REFERENCE, https://www.baseball-reference.com/bullpen/Collective_bargaining_agreement [<https://perma.cc/RJ5D-4LMA>] [https://web.archive.org/web/20230923004713/https://www.baseball-reference.com/bullpen/Collective_bargaining_agreement] (last updated Mar. 11, 2022).

166. *Id.*

167. Evan Drellich, *MLB’s Collective Bargaining Agreement: Guide To the Changes in the 2022-26 Labor Deal*, THE ATHLETIC (Mar. 16, 2022), <https://theathletic.com/3187914/2022/03/16/mlbs-collective-bargaining-agreement-guide-to-the-changes-in-the-2022-26-labor-deal/> [<https://perma.cc/4BQF-YQYT>] [<https://web.archive.org/web/20230923004826/https://theathletic.com/3187914/2022/03/16/mlbs-collective-bargaining-agreement-guide-to-the-changes-in-the-2022-26-labor-deal/>].

reasonable cooperation has been provided are resolved by the Arbitration Panel.¹⁶⁸ Further requirements are listed when it comes to investigations for violation of the drug policy, which will not be covered in the scope of this Note.

The CBA also discusses eligibility requirements for salary arbitration, which is typically only an option for players with three or more but less than six years of Major League service.¹⁶⁹ In certain cases, “Super Two” players—those who rank in the top twenty-two percent of service time amongst those who have spent between two to three years in the Majors—are also eligible for salary arbitration.¹⁷⁰ For salary arbitration, the Major League Baseball Players’ Association and the Major League Baseball Labor Relations Department “annually select the arbitrators,” and if they cannot agree on a list of names, the “American Arbitration Association [will] furnish them lists of prominent, professional arbitrators. Upon receipt of such lists, the arbitrators shall be selected by alternately striking names from the lists.”¹⁷¹ Cases are heard before a panel of three arbitrators.¹⁷²

In addition, the CBA details the grievance process. A grievance is “a complaint which involves the existence or interpretation of, or compliance with, any agreement, or any provision of any agreement, between the Association and the Clubs or any of them, or between a Player and a Club” aside from the Benefit Plan and agreement regarding dues check-off.¹⁷³ With the grievance system, players are able to challenge the Commissioner’s disapproval of their contract,¹⁷⁴ or disputes regarding a contract,¹⁷⁵ but it excludes complaints “which involve[] action taken with respect to a Player or Players by the Commissioner involving the preservation of the integrity of, or the maintenance of public confidence in, the game of baseball.”¹⁷⁶

Another aspect of the MLB judicial system is the Department of Investigations (DOI), which was established in response to Senator George Mitchell’s 2007 independent investigative report into use of performance enhancing substances amongst MLB players in the early 2000s “steroid era.”¹⁷⁷ While the department operates independently from MLB’s labor department, it still answers to the

168. MAJOR LEAGUE BASEBALL PLAYERS ASS’N, 2017–2021 BASIC AGREEMENT 53 (2016), https://www.mlbplayers.com/_files/ugd/b0a4c2_95883690627349e0a5203f61b93715b5.pdf [<https://perma.cc/X73P-WFK7>]

[https://web.archive.org/web/20231022010409/https://www.mlbplayers.com/_files/ugd/b0a4c2_95883690627349e0a5203f61b93715b5.pdf].

169. *Id.* at 18–19.

170. *Id.* at 19.

171. *Id.* at 20.

172. *Id.*

173. *Id.* at 41.

174. *Id.* at 3.

175. *Id.* at 18.

176. *Id.* at 42.

177. GEORGE J. MITCHELL, DLA PIPER U.S. LLP, REPORT TO THE COMMISSIONER OF BASEBALL OF AN INDEPENDENT INVESTIGATION INTO THE ILLEGAL USE OF STEROIDS AND OTHER PERFORMANCE ENHANCING SUBSTANCES BY PLAYERS IN MAJOR LEAGUE BASEBALL 287 (Dec. 13, 2007), <http://files.mlb.com/mitchrpt.pdf> [<https://perma.cc/3GTN-TKXT>] [<https://web.archive.org/web/20230923005056/https://files.mlb.com/mitchrpt.pdf>].

Commissioner, again highlighting the internal nature of this branch of MLB's judiciary.¹⁷⁸ Former Senior Vice President of Investigations Dan Mullin described his department's duties broadly: "to protect the integrity of the game, and we do everything from investigations involving performance enhancing drugs, corruption, gambling, we do corporate due diligence, we do age and identity fraud in Latin America, we do internal issues involving players."¹⁷⁹ The DOI led an investigation into the 2017 Astros sign stealing scandal, in which the team used a camera pointed at home plate and players banging on trash cans to let their hitters know what pitch was coming; ultimately, the team won the World Series that year.¹⁸⁰ In the Commissioner's report, he ruled that some members of Club leadership, but no players, were to be disciplined over their role in the scheme.¹⁸¹ Thus, even though the DOI is the department charged with a wide range of investigative powers, it is still the Commissioner who has the final say in handing out punishments.

3. FIFA Judicial System

FIFA utilizes a three-part independent judicial body made up of the Disciplinary Committee, Ethics Committee, and Appeal Committee.¹⁸² The Disciplinary Committee, Appeal Committee, and both chambers of the Ethics Committee are comprised of a "chairperson, deputy chairperson, and a specific number of other members,"¹⁸³ and the "composition of the judicial bodies should respect the fair distribution of positions and take account of the member associations."¹⁸⁴ Members "together, have the knowledge, abilities and specialist experience that is necessary for the due completion of their tasks" and "fulfil the independence criteria as defined in the

178. Sheryl Ring, *BTBS Exclusive: The "Baseball Cop" Tells His Story*, SBINATION (Sept. 30, 2019), <https://www.beyondtheboxscore.com/2019/9/30/20888890/btbs-exclusive-the-baseball-eddie-dominguez-dayan-viciedo-manfred-selig-biogenesis> [https://perma.cc/E3F3-65LR] [https://web.archive.org/web/20230923005130/https://www.beyondtheboxscore.com/2019/9/30/20888890/btbs-exclusive-the-baseball-eddie-dominguez-dayan-viciedo-manfred-selig-biogenesis].

179. John Holden, *MLB Investigations Unit Brings More Questions than Answers in Integrity Fee Debate*, LEGAL SPORTS REP. (July 28, 2018), <https://www.legalsportsreport.com/22345/mlb-investigations-integrity-fee/> [https://perma.cc/E6BZ-QUZJ] [https://web.archive.org/web/20230605073721/https://www.legalsportsreport.com/22345/mlb-investigations-integrity-fee/].

180. *MLB Completes Astros' Investigation*, MAJOR LEAGUE BASEBALL (Jan. 13, 2020), <https://www.mlb.com/press-release/press-release-mlb-completes-astros-investigation> [https://perma.cc/RJ32-6YSG] [https://web.archive.org/web/20231001214424/https://www.mlb.com/press-release/press-release-mlb-completes-astros-investigation].

181. *Id.*

182. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION [hereinafter FIFA], FIFA STATUTES: MAY 2022 EDITION 51 (May 2022), https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf [https://perma.cc/D3WR-CLLS] [https://web.archive.org/web/20231001214747/https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf].

183. *Id.*

184. *Id.*

FIFA Governance Regulations.”¹⁸⁵ Members are elected by the Congress for four-year terms, for a maximum of three terms in total.¹⁸⁶

The Disciplinary Committee is tasked with “pronounc[ing] the sanctions described in these Statutes and the FIFA Disciplinary Code on member associations, clubs, officials, players, football agents and match agents” and can propose amendments to the FIFA Disciplinary Code.¹⁸⁷ Recent decisions by the Disciplinary Committee include a December 2022 case of the French Football Federation (FFF) over Article 46 of the Disciplinary Code, which covers protests.¹⁸⁸ After a 2022 World Cup match between the Tunisian and French national teams, the FFF filed a protest challenging the referee’s decision to refuse a goal scored by the French team.¹⁸⁹ The Disciplinary Committee held that FFF failed to properly follow procedure when submitting the protest, and that under the FIFA Disciplinary Code the protest had no merit since decisions of referees are not able to be reviewed by FIFA judicial bodies.¹⁹⁰ Another recent decision from November 2022 concerned the Turkish club Yeni Malatyaspor over a violation of Article 15 of the Disciplinary Code, which covers failure to respect decisions.¹⁹¹ The Disciplinary Committee found that Yeni Malatyaspor had failed to comply with an award ordered by the Court of Arbitration for Sport, and imposed a fine in addition to a requirement to pay the money owed; further bans or sanctions could be imposed if the club continues to fail to comply.¹⁹²

The Ethics Committee is divided into an investigatory chamber and an adjudicatory chamber, and the Committee is tasked with “pronounc[ing] the sanctions described in these Statutes, the FIFA Code of Ethics and the FIFA Disciplinary Code on officials, players, football agents and match agents” and can propose amendments to the FIFA Code of Ethics.¹⁹³ Recent decisions by the Ethics Committee include the October 2022 case of Obert Zhoya, a Zimbabwean referee alleged to have sexually harassed female referees in violation of Articles 13, 23, and 25 of the Code of Ethics.¹⁹⁴ Zhoya was found

185. *Id.* at 52.

186. *Id.*

187. *Id.* at 53.

188. JORGE IVAN PALACIO, FIFA, DECISION OF THE FIFA DISCIPLINARY COMMITTEE (Dec. 5, 2022), https://digitalhub.fifa.com/m/21b0637bb6028c1f/original/French-Football-Federation_05122022.pdf [<https://perma.cc/9MTD-JFG4>]

[https://web.archive.org/web/20231001214925/https://digitalhub.fifa.com/m/21b0637bb6028c1f/original/French-Football-Federation_05122022.pdf].

189. *Id.*

190. *Id.*

191. YENI MALATYASPOR, FIFA, DECISION OF THE FIFA DISCIPLINARY COMMITTEE (Nov. 17, 2022), <https://digitalhub.fifa.com/m/3e9935473bd9a17/original/Yeni-Malatyaspor17112022.pdf> [<https://perma.cc/5MDB-88QD>]

[<https://web.archive.org/web/20231001215324/https://digitalhub.fifa.com/m/3e9935473bd9a17/original/Yeni-Malatyaspor17112022.pdf>].

192. *Id.*

193. FIFA, *supra* note 182, at 53.

194. VASSILIOS SKOURIS, MARIA CLAUDIA ROJAS, & FITI SUNIA, FIFA, DECISION OF THE ADJUDICATORY CHAMBER OF THE ETHICS COMMITTEE, (Aug. 31, 2022), <https://digitalhub.fifa.com/m/70ca1fddb3385e3b/original/FED-263Groundsfor-publication.pdf> [<https://perma.cc/J4Z4-S8NV>]

to be in violation of all three Code of Ethics articles, and the Committee banned him from football for five years and ordered him to pay a fine.¹⁹⁵ Another recent decision includes the June 2021 case of Issa Hayatou, a former president of the Confédération Africaine de Football, member of the FIFA council, and Honorary Vice-President of FIFA, over alleged violations of Articles 13, 15, and 25 of the Code of Ethics.¹⁹⁶ The Ethics Committee found that Hayatou breached the Article 15 duty of loyalty, and he was consequently banned from football for one year and required to pay a fine.¹⁹⁷

The Appeal Committee hears “appeals against decisions from the Disciplinary Committee and the Ethics Committee that are not declared final by the relevant FIFA regulations,” and its decisions are “irrevocable and binding on all the parties concerned . . . subject to appeals lodged with the Court of Arbitration for Sport (CAS).”¹⁹⁸ Further, “[r]ecourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.”¹⁹⁹ Recent decisions by the Appeal Committee include a September 2022 appeal by the Chilean Football Association and Peruvian Football Association over a decision by the Disciplinary Committee, where the Disciplinary Committee had dismissed all charges against the Ecuadorian Football Association over alleged forgery of documents establishing a player’s Ecuadorian nationality.²⁰⁰ The Appeal Committee confirmed the decision of the Disciplinary Committee and dismissed the appeals.²⁰¹ Another recent decision involves the case of Minhajul Islam Minhaj, who had a received a lifetime ban by the Bangladesh Football Federation over suspected betting activities; the ban was extended to worldwide effect by the Disciplinary Committee.²⁰² The Appeal Committee declared the appeal inadmissible.²⁰³

[<https://web.archive.org/web/20231001215443/https://digitalhub.fifa.com/m/70ca1fddb3385e3b/original/FED-263Groundsfor-publication.pdf>].

195. *Id.*

196. VASSILIOS SKOURIS ET AL., FIFA, DECISION OF THE ADJUDICATORY CHAMBER OF THE ETHICS COMMITTEE (June 17, 2021), <https://digitalhub.fifa.com/m/3a6fe5031f24fb70/original/AC4-202117-06-2021Issa-HAYATOU.pdf> [<https://perma.cc/4UTD-TKBN>]

[<https://web.archive.org/web/20231001220103/https://digitalhub.fifa.com/m/3a6fe5031f24fb70/original/AC4-202117-06-2021Issa-HAYATOU.pdf>].

197. *Id.*

198. FIFA, *supra* note 182, at 54.

199. *Id.* at 59–60.

200. NEIL EGGLESTON, CHRISTIAN ANDREASEN, & JAHANGIR BAGLARI, FIFA, DECISION OF THE FIFA APPEAL COMMITTEE (Sept. 15, 2022), https://digitalhub.fifa.com/m/abca4d07ff33226/original/FDD-11556_Decision.pdf [<https://perma.cc/VF4G-TSW6>]

[https://web.archive.org/web/20231001220150/https://digitalhub.fifa.com/m/abca4d07ff33226/original/FDD-11556_Decision.pdf].

201. *Id.*

202. NEIL EGGLESTON, CELESTIN YANINDJI, & SALMAN AL-ANSARI, FIFA, DECISION OF THE FIFA APPEAL COMMITTEE (May 3, 2022), https://digitalhub.fifa.com/m/2585f5b41908e661/original/Minhajul-Islam-Minhaj_03052022.pdf [<https://perma.cc/HE9X-DCZB>]

[https://web.archive.org/web/20231022021012/https://digitalhub.fifa.com/m/2585f5b41908e661/original/Minhajul-Islam-Minhaj_03052022.pdf].

203. *Id.*

Since 2002, FIFA has recognized the authority of CAS to resolve appeals of decisions by its internal judicial system.²⁰⁴ First established in 1984 by the International Olympic Committee, CAS is now an “institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.”²⁰⁵ It is staffed with nearly 300 arbitrators and tasked with “resolving legal disputes in the field of sport through arbitration” by “pronouncing arbitral awards that have the same enforceability as judgements of ordinary courts,” and also provides avenues for parties to resolve disputes through mediation.²⁰⁶ CAS will only hear disputes if parties agree to submit to its authority in writing, and the recognition of its authority “may be on a one-off basis or appear in a contract or the statutes or regulations of a sports organization.”²⁰⁷ Once pronounced, a CAS award is final and binding but “recourse to the Swiss Federal Tribunal is allowed on a very limited number of grounds, such as lack of jurisdiction, violation of elementary procedural rules (e.g. violation of the right to a fair hearing) or incompatibility with public policy.”²⁰⁸

While FIFA was originally resistant to the idea of CAS jurisdiction, as of 2020 approximately forty-five percent of cases heard at CAS are FIFA appeals, and the number grows each year.²⁰⁹ One of the first cases that tested CAS jurisdiction over FIFA appeals was the 2003 decision *Fulham FC v. Olympique Lyonnais* that involved a transfer contractual dispute between clubs.²¹⁰ After Fulham refused to comply with the CAS decision that the club needed to complete the transfer payment, FIFA imposed a transfer ban on Fulham until it complied; this early case shows how even in the beginning, FIFA was serious about submitting to CAS jurisdiction. A recent CAS arbitral award that involved FIFA includes the 2022 decision *Football Union of Russia v. Fédération Internationale de Football Association et al.*, an appeal against a decision by the Bureau of the FIFA Council which suspended national teams associated with the Football Union of Russia from participation in FIFA competitions following Russia’s

204. FIFA, *supra* note 182, at 58–59.

205. *Frequently Asked Questions*, CT. OF ARB. FOR SPORT, <https://www.tas-cas.org/en/general-information/frequently-asked-questions.html> [https://perma.cc/8LMF-2FY3] [https://web.archive.org/web/20231022021613/https://www.tas-cas.org/en/general-information/frequently-asked-questions.html] (last visited Oct. 21, 2023).

206. *Id.*

207. *Id.*

208. *Id.*

209. STA, A GUIDE TO FIFA; BEFORE AND AFTER ELECTING COURT OF ARBITRATION FOR SPORTS: 2019–2020 (n.d.), https://www.stalawfirm.com/public/uploads/downloads/A_Guide_to_FIFA_Court_ofArbitration_for_Sports-min.pdf [https://perma.cc/H4NC-7BSW] [https://web.archive.org/web/20231001220322/https://www.stalawfirm.com/public/uploads/downloads/A_Guide_to_FIFA_Court_ofArbitration_for_Sports-min.pdf].

210. CAS 2003/O/486, *Fulham FC v. Olympique Lyonnais*, preliminary award of 15 Sept. 2003, <https://jurisprudence.tas-cas.org/Shared%20Documents/486.pdf> [https://perma.cc/T6TZ-4AHG] [https://web.archive.org/web/20230920172628/https://jurisprudence.tas-cas.org/Shared%20Documents/486.pdf].

invasion of Ukraine.²¹¹ CAS confirmed the decision by the Bureau of the FIFA Council.²¹² As a fellow International Federation, FIA can examine FIFA's implementation of CAS jurisdiction to supplement its own internal judicial mechanisms.

III. SOLUTIONS

A. CAS

One possible solution to the problem of FIA self-policing is to add a provision in the FIA governing documents that allows parties recourse to submit to CAS arbitration outside of doping-related incidents. Under this new system, FIA will still be able to maintain an internal mechanism for dispute resolution with the requirement that parties must first exhaust the resolution mechanisms of the International Tribunal and International Court of Appeal, but with the added provision that parties will be able to appeal the decision to CAS, which exists as a less biased third party. This method will go a long way to address the concern that FIA cannot adequately mark its own homework.

With this approach, FIA does not need to reinvent the wheel. The organization can simply model its CAS appeals procedure on the one outlined in the FIFA Statutes. Under Article 56 of the FIFA Statutes, "CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law."²¹³ However, "[r]ecourse may only be made to CAS after all other internal channels have been exhausted," and CAS does not deal with appeals concerning "(a) violations of the Laws of the Game; (b) suspensions of up to four matches or up to three months (with the exception of doping decisions); (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made."²¹⁴ FIA can add similar provisions to its own Statutes to incorporate CAS arbitration. Instead of violations of laws of the game, FIA could have interpretations of the sporting regulations; instead of suspensions of matches, FIA could discuss suspension from participation in a Grand Prix or suspension of a driver's Super License; the final prong could be kept intact since FIA would still want to keep some aspects of its internal system.

Initially, FIFA wanted to establish its own independent Arbitration Tribunal for Football, but after it became apparent that financial and time constraints would not permit the organization to properly set up an independent arbitration tribunal, FIFA

211. CAS 2022/A/8708, *Football Union of Russ. v. Fédération Internationale de Football Ass'n*, 2022/A/870, https://www.tas-cas.org/fileadmin/user_upload/8708_FINAL_Award_FINAL_.pdf [<https://perma.cc/3FNZ-SQ9X>] [https://web.archive.org/web/20230920172734/https://www.tas-cas.org/fileadmin/user_upload/8708_FINAL_Award_FINAL_.pdf].

212. *Id.*

213. FIFA, *supra* note 182, at 58.

214. *Id.*

decided to recognize CAS jurisdiction.²¹⁵ Similarly, FIA would likely find it difficult to set up its own tribunal, especially when the existing and trusted mechanisms of CAS exist. Notably, “CAS has developed its structure and jurisprudence to be the ‘world’s supreme court in sport’ and contributes massively to the development of *lex sportiva*.”²¹⁶ Adding FIA to the list of organizations which recognize CAS jurisdiction for cases outside of doping would contribute a great deal to *lex sportiva*, which translates to sports law. Other advantages to CAS arbitration include institutional legitimacy and uniformity of decisions. CAS tends to “engag[e] extensively in de facto precedent setting and precedent following.”²¹⁷ Further, CAS serves two review functions as an organization. It engages in a “vertical, constitution-like form of review” when it ensures that sports governing bodies “act within their competences and follow proper procedure; that they respect the principle of legality, fundamental rights, and the principle of proportionality; and that they interpret and apply applicable rules in a correct and consistent manner.”²¹⁸ And CAS engages in horizontal review when it “settles disputes where [sports governing bodies] disagree on the division of powers between them.”²¹⁹ In this way, FIA parties that choose to appeal to CAS can be sure that their appeal will be heard by a body that sets and follows its own precedent and enjoys worldwide legitimacy.

The solution of CAS arbitration is not without shortcomings. One problem is lack of expertise. Right now, there are no CAS arbitrators with requisite expertise in motorsports or Formula 1 matters to form diverse panels to adequately decide on Formula 1 cases.²²⁰ This was also a hurdle faced by FIFA when it began to permit CAS arbitration, and once again FIA can take a page out of its sister international federation’s book. Because of the large amount of football-related disputes that come before CAS, CAS and FIFA have set up a specialist list of 168 arbitrators forming the “Football List,” “[which] are appointed by ICAS as per the proposals submitted by the six confederations, clubs (ECA), leagues (WLF), players (FIFPro), ICAs and FIFA.”²²¹ Similarly, FIA can work together with the constructors and drivers to come up with a “Formula 1 List” of specialist arbitrators to hear future appeals.

Had the FIA rules included an avenue to appeal decisions to CAS, it is possible that Mercedes would have gone ahead with its appeal after Abu Dhabi through the FIA

215. Letter to the National Associations of FIFA, Circular no. 827 (Dec. 10, 2002).

216. Jack Anderson & Chui Ling Goh, *The Credibility of the Court of Arbitration for Sport*, 13 HARV. J. SPORTS & ENT. L. 233, 257 (2022).

217. Johan Lindholm, *A Legit Supreme Court of World Sports? The CAS(e) for Reform*, 21 INT’L SPORTS L. J. 1, 2 (2021).

218. *Id.* at 2 (emphasis omitted).

219. *Id.*

220. *List of Arbitrators (General List)*, CT. OF ARB. FOR SPORT, <https://www.tas-cas.org/en/arbitration/liste-des-arbitres-liste-generale.html> [https://perma.cc/H7DV-JFK8] [https://web.archive.org/web/20230920173431/https://www.tas-cas.org/en/arbitration/liste-des-arbitres-liste-generale.html] (last visited Oct. 21, 2023).

221. *Arbitrators*, INSIDE FIFA, <https://www.fifa.com/legal/court-of-arbitration-for-sport/arbitrators> [https://perma.cc/U7YN-ZJY8] [https://web.archive.org/web/20230920173606/https://www.fifa.com/legal/court-of-arbitration-for-sport/arbitrators] (last visited Oct. 21, 2023).

judicial system, with the knowledge that it would be able to appeal to CAS if the decision did not fall the way the team wanted. While this is pure speculation, it is not a reach to believe that a potential to appeal to CAS would have factored into Mercedes' decision to withdraw the appeal.

B. MLB ARBITRATION

Another possible solution is to take notes from MLB's arbitration procedures, in which the Players' Association and the League's Labor Department each select arbitrators to comprise three-member panels to hear salary disputes. FIA could adopt a version where the Grand Prix Drivers' Association (GPDA), the union of Formula 1 drivers,²²² and Formula 1 leadership select arbitrators from a list provided by CAS, the American Arbitration Association-Internal Centre for Dispute Resolution (AAA-ICDR),²²³ or another arbitration body. The selected arbitrators would then form three-member panels to hear disputes as an alternative mechanism to the IT and ICA, with the decisions appealable to CAS as the final instance. In this manner, the drivers have more oversight in the arbitration process and are not entirely at the whim of FIA leadership.

Some immediate issues arise with this proposal. One of the most notable differences between FIA and MLB is the different governance models of European versus American sports. In the European system, "[a]lmost all sporting activity takes place within a 'pyramid' structure where an international federation of national governing boards (NGBs) regulate a particular sport; each nation's NGB regulates both commercial professional leagues . . . and a scheme of regional and local governance of clubs . . ." ²²⁴ Within this system, "strong player unions are absent."²²⁵ In the American system, professional sports are organized as "highly successful commercial major leagues, operated as for-profit businesses, using the structure of a joint venture controlled by the owners of professional clubs."²²⁶ As such, "bona fide arms-length negotiation operates as a pre-condition to the applicability of the non-statutory labor exemption, which is a judicial creation designed to immunize collective bargains struck between both sides of industry from anti-trust law."²²⁷ While the GPDA exists, because

222. Jake Nichol, *What Is the GPDA in Formula 1 - and Which Drivers Are Members?*, HITC (Mar. 26, 2022), <https://www.hitc.com/en-gb/2022/03/26/what-is-the-gpda-fl/> [<https://perma.cc/7HTB-YATZ>] [<https://web.archive.org/web/20230920173704/https://www.hitc.com/en-gb/2022/03/26/what-is-the-gpda-fl/>].

223. AAA-ICDR *Sports Industry Dispute Resolution*, AM. ARB. ASS'N, <https://go.adr.org/sports-dispute-resolution.html> [<https://perma.cc/SWL2-3XQY>] [<https://web.archive.org/web/20230920173853/https://go.adr.org/sports-dispute-resolution.html>] (last visited Oct. 21, 2023).

224. STEPHEN F. ROSS, *ADVANCED INTRODUCTION TO GLOBAL SPORTS LAW 1* (2021).

225. Stephen Weatherill, *Resisting the Pressures of "Americanization": The Influence of European Community Law on the "European Sport Model"*, 8 WILLAMETTE J. INT'L L. & DISP. RESOL. 37, 73 (2000).

226. ROSS, *supra* note 224, at 2.

227. Weatherill, *supra* note 225, at 73.

not every driver is necessarily a member²²⁸ and there are only twenty Formula 1 drivers total, the union does not enjoy bargaining power comparable to that of the MLBPA. All Major League players on each club's 40-man roster as well as those on the injured list are represented by the MLBPA,²²⁹ and as of 2022, a majority of Minor League players have elected to join the union.²³⁰

Another potential issue that arises is that the Commissioner has the final say when it comes to salary arbitration. FIA certainly cannot follow this system and put the final decision of arbitration in the hands of the FIA President, the position most equivalent to Commissioner, since it would exacerbate the problem of FIA's ability to rubberstamp its own decisions. One potential remedy for this is to combine this solution with the CAS solution by permitting appeals to CAS after parties have gone through this internal arbitration. With this proposal, however, drivers would likely face steep opposition in their attempt to become more involved in the arbitrator selection process.

C. CIVIL JUSTICE

A third possible solution is an avenue for civil justice without first needing to exhaust internal FIA mechanisms. Parties could directly bring their cases to national courts and have their disputes heard before judges or juries depending on the legal system of the country in which they brought the complaint.

While this proposal would take the FIA dispute resolution system outside of the international federation entirely, thereby sidestepping the issue of FIA's self-governance, several difficulties of implementation exist. The autonomy of sport has long been recognized, including by the United Nations in 2014.²³¹ While this autonomy "does not mean that [sports] are above the law or [sports] should not be expected to adhere to principles of good governance...the world of sport and sports

228. Though it is presumed that every current driver on the grid is a member of the GPDA, historically not every driver has elected to join the union and union membership does not automatically extend to all drivers. Jonathan Noble & Lawrence Barretto, *Grand Prix Drivers' Association Gets 100% F1 Driver Membership*, AUTOSPORT (Dec. 13, 2017), <https://www.autosport.com/f1/news/grand-prix-drivers-association-gets-100-f1-driver-membership-4989413/4989413/> [https://perma.cc/VB57-PEFN] [https://web.archive.org/web/20231107002510/https://www.autosport.com/f1/news/grand-prix-drivers-association-gets-100-f1-driver-membership-4989413/4989413/].

229. FAQ, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <https://www.mlbplayers.com/faq> [https://perma.cc/7JVY-G9AX] [https://web.archive.org/web/20230920174741/https://www.mlbplayers.com/faq] (last visited Oct. 21, 2023).

230. Mark Feinsand, *Minor League Players Recognized as Part of MLBPA*, MLB (Sept. 14, 2022), <https://www.mlb.com/news/minor-leaguers-join-mlb-players-union> [https://perma.cc/CG9Y-E2LK] [https://web.archive.org/web/20230920175418/https://www.mlb.com/news/minor-leaguers-join-mlb-players-union].

231. *Historic Milestone: United Nations Recognises Autonomy of Sport*, INT'L OLYMPIC COMM. (Nov. 3, 2014), <https://olympics.com/ioc/news/historic-milestone-united-nations-recognises-autonomy-of-sport> [https://perma.cc/XZJ9-P4NT] [https://web.archive.org/web/20231022030554/https://olympics.com/ioc/news/historic-milestone-united-nations-recognises-autonomy-of-sport].

administration should be free from direct political or government interference.²³² The respect for sporting autonomy means that when it comes to sports cases, “[c]ourts generally are very deferential to the rule-making, dispute resolution, and enforcement authority of sport governing bodies at all levels of national . . . or state . . . athletic competition to protect the on-field and off-field integrity of sport.”²³³ Indeed, “judges rarely invalidate or refuse to enforce arguably reasonable internal rules and decisions to protect the integrity of sport.”²³⁴

Because of the wide variety of nationalities of people involved in FIA, “if national courts adjudicate these disputes, there is an inherent tension between internationalism (i.e., the need for international sports to operate under a consistent, worldwide legal framework), and nationalism (i.e., the desire of each nation to preserve its sovereignty and ensure that its athlete citizens are protected by its laws).”²³⁵ Questions of jurisdiction would arise regarding where to hear complaints and which country’s laws to follow, and whether a decision of the courts of one country is enforceable in another or against another country’s citizens. Political differences would also come into play despite every sporting organization’s ostensible commitment to political neutrality.

One solution would be to follow French law since FIA is headquartered in France.²³⁶ Or, Swiss law could be followed, modeled off the CAS mechanism which already allows limited recourse to the Swiss Federal Tribunal,²³⁷ though both the “Swiss Federal Tribunal and EctHR [(European Court of Human Rights)] have mentioned that there is no other viable alternative to the CAS to resolve international sports-related disputes quickly and effectively.”²³⁸ Regardless, “inconsistent and unpredictable jurisprudence and the application of general principles”²³⁹ are likely to occur, making this proposal one that is unlikely to garner much support.

IV. CONCLUSION

While Formula 1 is a sport that has seen its fair share of controversy over the years, the decisions by FIA leadership made during the 2021 Abu Dhabi Grand Prix have had lasting consequences on the motorsport community and even on the sporting world at large. The concentration of decision-making power in the hands of one Race Director and the lack of external judicial mechanisms contributed to the contravention of the sporting rules during the race and ended the 2021 season shrouded with scandal. This

232. Louise Reilly, *An Introduction To the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes*, 2012 J. DISP. RESOL. 63, 77 (2012).

233. Matthew J. Mitten, *How Is the Integrity of Sport Protected in the United States?*, 19 TEX. REV. ENT. & SPORTS L. 89, 89 (2019).

234. *Id.* at 89.

235. Matthew J. Mitten & Hayden Opie, “*Sports Law*”: *Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 TUL. L. REV. 269, 285 (2010).

236. *The FIA*, FIA, <https://www.fia.com/fia> [<https://perma.cc/LE8Y-PXW7>] [<https://web.archive.org/web/20230920180439/https://www.fia.com/fia>] (last visited Oct. 21, 2023).

237. *Frequently Asked Questions*, *supra* note 205.

238. Anderson & Goh, *supra* note 216, at 263.

239. *Id.*

Note compares the judicial and governance structure of FIA with that of MLB and FIFA, and proposes three solutions to bring external accountability to FIA to ensure that a situation like Abu Dhabi 2021 does not happen again.

In one solution, FIA would permit parties to submit to CAS arbitration for cases outside of those related to doping. A second solution would see FIA develop an arbitration system similar to that used by MLB. A third possible solution would see FIA allow parties to go directly to civil justice without first exhausting internal judicial mechanisms. To best address the issues brought to light by Abu Dhabi, allowing FIA judicial decisions to be appealed to CAS is the method that is most likely to achieve success and restore public faith in the sport of Formula 1.